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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 74.

THE ST. TAMMANY WATER WORKS COMPANY AND THE CITY OF NEW ORLEANS, APPELLANTS,

vs.

THE NEW ORLEANS WATER WORKS COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

FILED OCTOBER 1, 1883.

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1 UNITED STATES OF AMERICA.

Bill of Complaint. Filed July 24th, 1882.

Circuit Court of the United States in and for the 5th Judicial Circuit and Eastern District of Louisiana.

THE NEW ORLEANS WATER WORKS COMPANY
vs.
THE ST. TAMMANY WATER WORKS COMPANY *et al.* } No. 10031.

To the honorable the judges of the circuit court of the United States in and for the fifth judicial circuit and eastern district of Louisiana:

The New Orleans Water Works Company, a corporation duly created and existing under and by virtue of the laws of the State of Louisiana, and domiciled in the parish of Orleans, in said State, brings this its bill of complaint against the city of New Orleans, a municipal corporation created and exercising its authority under and by virtue of the laws of the State of Louisiana, situate in
2 the parish of Orleans, in said State, and against the St. Tammany Water Works Company, a corporation claiming corporate power and authority under and by virtue of the laws of the State of Louisiana providing for the organization of corporations, and domiciled in the said parish of Orleans; and thereupon your orator complains and shows unto your honors that the Legislature of the State of Louisiana, by an act thereof approved on the 1st of April, A. D. 1883, created and established a corporation called the "Commercial Bank" of New Orleans; that the chief object of the said company was to convey water into the city of New Orleans and its faubourgs and into the house- of the inhabitants thereof; that in and by the said act of the Legislature it was enacted that the said Commercial Bank of New Orleans should have a capital stock of three million dollars ($3,000,000.00), to be subscribed for as provided in the said act, and that the said corporation should erect and establish a system
3 of public water works in the city of New Orleans, as provided in the said act, and enacted that the said Commercial Bank of New Orleans should have and possess the exclusive privilege, from and after the passage of the said act, of supplying the inhabitants of the city of New Orleans and its faubourgs with water from the Mississippi river by means of pipes or conduits, and was vested with power to lay down pipes and erect the works necessary to effect the said purpose, subject to the restrictions and conditions contained in the said act of the Legislature; and it was in said act further provided that if at any time after the expiration of thirty-five years from the date of the passage of the said act the corporation of the city of New Orleans should so elect it was authorized to purchase from the said Commercial Bank of New Orleans the water works so to be constructed by the said company, together with all the rights and privileges appertaining to the same, including the said
4 exclusive right aforesaid; that it was further provided in

the said act of the Legislature that in the event the city of New Orleans, after the expiration of the said period of thirty-five years, should elect to purchase the said water works from the Commercial Bank of New Orleans, the price to be paid therefor by the city of New Orleans should be fixed by arbitrators, as provided in the said act, and that the am't so fixed should be payable to the said Commercial Bank of New Orleans in the bonds of the mayor, alderman, and inhabitants of the city of New Orleans, bearing interest at the rate of five per cent. per annum, payable semi-annually, and redeemable in not less than ten nor more than thirty years from the date on which the said award should be signed and the said water works delivered over to the said corporation of the city of New Orleans, as more fully and at large appears by the said public act of the Legislature of said State, to which your orator at all times refers.

5 And your orator further shows unto your honors that after the passage and adoption of said act of the Legislature the capital stock required, as provided in said act, was duly subscribed, and the said company was organized and accepted the terms of the said act of the Legislature, and constructed a system of water works in the city of New Orleans, as provided and directed in the said act of the Legislature, and continued to own, manage, control, and operate the same for the full period of thirty-five years from and after the adoption of the said act of the Legislature, and during the entire period aforesaid had and possessed under and by virtue of the terms of the said grant and act of the Legislature the exclusive right and privilege of maintaining and operating the said public water works and providing a supply of water to the city of New Orleans and the inhabitants thereof.

6 And your orator further shows unto your honors that at the expiration of the said period of thirty-five years the corporation of the city of New Orleans elected to take advantage of the provisions of the said act, wherein and whereby it was permitted to purchase the rights of the said Commercial Bank of New Orleans; that appraisers were duly appointed and the valuation of the said property arrived at and established at two million of dollars ($2,000,000.00); that at the time, as authorized in the said act of the Legislature, the city of New Orleans was a large shareholder in the said Commercial Bank of New Orleans, and in order to pay for the said water works acquired the interest of the other shareholders therein, — issued and delivered to the said Commercial Bank her bonds, as provided in the said act of the Legislature, in the sum of one million three hundred and ninety-three thousand four hundred dollars, redeemable in forty years from the date thereof, and bearing five per cent. interest per annum, payable semi-annually,

7 which said bonds are commonly known as the "water works bonds;" whereupon the said Commercial Bank of New Orleans, as required by the said act of the Legislature, conveyed and transferred unto the city of New Orleans full, absolute, and complete title in and to the said water works, and of all the rights, privileges, and immunities which were possessed by the said Com-

mercial Bank of New Orleans, whereby the city of New Orleans became and was vested with the exclusive right and privilege of furnishing water by a system of public water works to the inhabitants of the said city of New Orleans; that the said right was an exclusive right without limit as to time, and in the language of said act was "forever."

And your orator further shows unto your honors that, having so become possessed of the said water works, the said city of New Orleans, as a corporation, managed and conduc[ted] the same until on or about the month of February, A. D. 1878, as hereinafter set forth.

8 And your orator further shows unto your honors that during the period of time whilst the said city of New Orleans owned and operated the said water works the said corporation was much embarrassed in its finances, and that it was with extreme difficulty that it could meet and pay the annual demand for interest on the said bonds; that in 1877, in order to relieve the said city of New Orleans, in a measure, from its embarrassment growing out of its indebtedness, the Legislature of the said State of Louisiana, at an extra session of the Legislature held in 1877, passed and adopted act No. 33 of the acts of the said extra session, entitled "An act to enable the city of New Orleans to promote the public health, to afford greater security against fire by the establishment of a corporation to be called the New Orleans Water Works Company, to authorize the said company to issue bonds for the purpose of extending and improving the said works, and to furnish the inhabitants of the city of New Orleans an adequate supply
9 of pure and wholesome water, and to permit the holders of the water works bonds to convert them into stock and to provide for the liquidation of the bonded and floating debt of the city of New Orleans," etc.; that it was provided in the said act that a corporation be created to be known as the New Orleans Water Works Company, and provided, among other things, that the holders of the said "water works bonds" might convert the same into the capital stock of the said company, and that, when so converted, the said "bonds" should be surrendered and cancelled; that there should be issued to the city of New Orleans stock amounting to the sum of six hundred and six thousand six hundred dollars, full-paid shares of said stock of one hundred dollars each, plus one additional share of stock for every one hundred dollars of the said "water works bonds" which she had prior to that time and since the issue of the said bonds taken up either by payment, funding into premium
10 bonds, or otherwise, and that for the purpose of carrying out the provisions of the act all the certificates for all of the stock in the said company should be issued to the said city of New Orleans, one set of said certificates equal in value and amount to the then outstanding par value and amount of the said "water works bonds" being held by the said city to be exchanged for the said "bonds" with the holders thereof, and the other set of certificates being held by the said city of New Orleans in her own right and in trust for

the holders of all her other bonded and floating indebtedness of every kind and nature.

And it was also further provided in the said act that the said water works company should be organized by the mayor of the city, giving thirty days' notice that he would receive subscriptions of bondholders, who may agree to exchange their said "bonds" for the stock aforesaid, and that the said city should subscribe to the amount of six hundred and six thousand six hundred dollars
11 ($606,600.00) and such other amount as should be equal in par value to any of the said "water works bonds" which should have been extinguished by the said city, and that as soon as the sum of five hundred thousand dollars ($500,000.00) in addition to the said subscription to be made by the said city should have been made, and the am't of "bonds" represented thereby and exchanged therefor should have been annulled, surrendered, and cancelled by the administrator of finances, *and that* the said subscribers shall assemble, on a day to be named by the mayor, *and* to elect a board of directors, to be composed of seven persons, of whom the mayor was designated as one, and that of the remainder four — to be designated by the mayor, and the remaining three to be elected by the subscribers other than the said city from amongst themselves, and that the persons thus designated and elected to constitute the first board of directors of the said company.

12 And your orator further shows unto your honors that the city of New Orleans accepted the conditions and provisions of the said act and subscribed for the full amount of the said shares of stock so to be subscribed by her, and that the holders of the said "water works bonds" subscribed also to the said stock of the said company in a sum exceeding five hundred thousand dollars ($500,000.00) and surrendered their said "bonds" to the administrator of finances, and that on or about the — day of March, 1878, the said company was duly organized and the board of directors duly appointed and elected, as provided by the said act, and said company agreed to and accepted all of the conditions of the said act as amended by an act entitled "An act relative to the charter of the New Orleans Water Works Company, and amending act No. 33 of the extra session of 1877, approved March 31st, 1877," which said last-named act was approved on
13 the 26th day of Feb'y, A. D. 1878, whereby your orator became and was vested with corporate character and existence, and that all the rights and privileges granted under the said act No. 33 of the extra session of 1877, and the said act amendatory thereto; and that the said city of New Orleans having, as aforesaid, accepted the conditions and terms of the said act, did, as provided for in the said act, immediately after the election and appointment of the said board of directors, as aforesaid, by notarial act, transfer, set over, and grant unto your orator all its rights, title, and interest in and to the said water works as it had acquired the same from the said Commercial Bank of New Orleans and all subsequent additions thereto; which said notarial act, or

a copy thereof, duly attested, — has now here in court, ready to submit to the court, as the court shall direct.

And your orator further shows unto your honors that under and by reason of the premises your orator became and was vested with full, absolute, and complete title to all the said water works
14 and to all the privileges acquired by the said city of New Orleans from the Commercial Bank of New Orleans, as aforesaid, and the exclusive right of supplying the city of New Orleans and its inhabitants with water from the Mississippi river, or any other stream or river, by means of pipes or conduits, and the right of erecting or constructing any necessary works, engines, or machinery for that purpose for the full period of fifty years from and after the said thirty-first day of March, A. D. 1877; and your orator further shows unto your honors that among other rights granted and conferred upon your orator by the said act of the Legislature was the right and power to increase the capital stock of the said corporation, and particularly to borrow money for the purpose of improving and enlarging its works, increasing the supply of water to be furnished the city of New Orleans; that to accomplish this purpose the corporation was authorized to issue bonds of the company to an am't not exceeding two million of dollars ($2,000,000.00), and
15 *and* in such sums and on such terms and bearing such rate of interest as the said board might determine or deem most expedient, and to secure the payment of the said bonds, principal and interest, by a mortgage of all the property and franchises of the said company, including its franchise to be a corporation; authorized the said company to include property and franchises of the said company, acquired and to be acquired, subject to the condition that no such bonds or mortgage should be given or issued without the consent of the council of the city of New Orleans, and that the said bonds should not be sold or disposed of, except upon such terms as should be approved by the said council of the said city of New Orleans.

And your orator further shows unto your honors that in order to extend the works and to renew the old and decayed pipes and to replace the same and to extend the facilities of your orator for supplying water to the said city of New Orleans it became and
16 was immediately necessary to expend large sums of money for the purpose of enabling it to carry on the said improvements, your orator, by and with the consent of the city of New Orleans, has made and issued five hundred thousand dollars ($500,000.00) in the bonds of said company and has disposed of $300,000 of the same and realized the money therefrom by and with the consent of the said city of New Orleans and has expended the said money, or a large portion thereof, in increasing, improving, and enlarging the said water works, to render the same adequate to the demand for water, and to carry out the provisions and requirements of the said act, and to secure the payment of the said bonds has also, by and with the consent of the said city of New Orleans, as provided in the said act, made and executed a mortgage including all the property of your orator, including its franchises as a cor-

poration, and that the said mortgage has been duly recorded and is now in full force and effect.

17 And your orator further shows unto your honors that among the rights so conferred upon your orator was the right to fix charges for water within the limits of the city of New Orleans, limited only by the provision that the net profits of the company should not exceed ten per cent. per annum upon the capital stock thereof.

And your orator further shows unto your honors that the said New Orleans Water Works Company has in all things acted in good faith; that it accepted the terms and conditions of the said act of the Legislature only after having obtained the full consent of the city of New Orleans thereto and by and with the full assent of the city of New Orleans, as hereinbefore set forth; that had your orator not supposed that your orator had thereby acquired and obtained the full and exclusive right and privilege of supplying the city of New Orleans with water by a system of public water works to the exclusion of all other companies your orator never would have

18 entered into the said engagements—would never have accepted the terms and provisions of the said act of the Legislature.

And your orator further shows unto your honors that it would have been unable to place or negotiate the said bonds or borrow the said money, except by reason of the exclusive right so granted unto your orator, and that it would, in all things, have been able to comply with or carry out the provisions of the said act.

And your orator further shows unto your honors that, in order to be able to comply with the terms and provisions of the said act and make the said water works competent to an adequate supply of water in the said city of New Orleans, your orator will be compelled to borrow large sums of money to be expended thereon, and that, unless the exclusive rights and privileges of your orator are in all things protected and preserved unto her, your orator will be absolutely without credit or means of borrowing money, as without the said exclusive right and privilege so conferred by the

19 said acts of the Legislature a mortgage upon the property of your orator's corporation would be deemed by all persons having money to loan as inadequate as a security, and the whole object and purpose for which the said corporation was created will be in all things defeated.

And your orator further shows unto your honors that, by reason of the legislation aforesaid, and the acts of the city of New Orleans aforesaid, and the organization of the New Orleans Water Works Company, and its acceptance of the conditions, privileges, and burdens contained in the said act, the State of Louisiana and the city of New Orleans became and were obligated unto your orator to warrant, maintain, and protect your orator in the full right and exercise of its exclusive rights and privileges aforesaid, and that the obligation of a contract grew up and was created by and between the said State of Louisiana, the city of New Orleans, and your orator, which said obligation was and is sacred under and by

virtue of the provisions of section ten of article one of the
20 Constitution of the United States, and which said obligation, under and by virtue of the said Constitution of the United States, can in nowise be impaired by any act of the State of Louisiana or the city of New Orleans.

And your orator further shows unto your honors that there is in existence and in force in the State of Louisiana a statute providing for the organization of corporations for the object of improvement and other purposes, whereby any number of persons, not less than six, upon complying with the provisions of the said general law, may form and constitute themselves into a corporation.

And your orator further shows unto your honors that on or about the second day of May, A. D. 1882, certain number of persons, more than six in number, undertook to avail themselves of the provisions of the said act of general legislation to organize and constitute themselves into a corporation having for its avowed purpose and object to "furnish and supply the inhabitants
21 of the city of New Orleans and other localities contiguous to the line of its works with an ample supply of pure, clear, and wholesome water from such rivers or other fountain sources as may be found most available or suitable for such purpose, and for that end to raise or construct such dams, mounds, or reservoirs; to construct, conduct, or cause to be opened such canals or tunnels, and to lay such pipes or conduits, and to construct, erect, and maintain and operate all such works, stand-pipes, engines, and machinery, and to procure such rights of way, franchises, and privileges, as may be necessary or available to carry out the said object;" and to that end, on the said second day of May, A. D. 1882, they appeared before one Samuel Flower, a notary public in and for the parish of Orleans, and made and entered into and subscribed alleged articles and an alleged charter under the said general legislation of the State of Louisiana of the style of the St. Tammany Water Works Company, and caused the same to be recorded with the recorder of
22 mortgages in the parish of Orleans, in the said State, and caused the said articles and said alleged charter to be published in the New Orleans Picayune, a daily newspaper published in the said city of New Orleans, in the manner as provided in the said general legislation; and the said persons and their associates now claim that all of the said acts have the effect to constitute & create the said Saint Tammany Water Works Company, the defendant herein, a corporation under and by virtue of the laws of the State of Louisiana, and claim to be and act as a corporation, and claim and pretend that under and by virtue of said general legislation of the said State and their said acts the said Saint Tammany Water Works Company has full and competent right, authority, and power to derive from the laws of the State of Louisiana to invade the rights of your orator, and to erect, establish, and conduct and carry on within the limits of the city of New Orleans, without the
23 consent of your orator, a rival and competing system of water works, and to divide with your orator the right of supplying the said city of New Orleans and the inhabitants thereof with water

from rivers or streams by a system of public water works, and to receive remuneration, pay, and profit therefor.

And your orator further shows unto your honors that the said alleged charter of the said Saint Tammany Water Works Company, or a copy thereof, is filed with this bill as an exhibit and marked "Exhibit A."

And your orator further shows unto your honors that the said defendant, The Saint Tammany Water Works Company, had no sooner obtained and published their said alleged charter then they began holding out and pretending *and pretending* and asserting that they have full competent right and authority to establish, maintain, and carry on a competing system of public water works with the said city of New Orleans; that while they do not question the fact that the Legislature of the said State at the time that it granted
24 and conferred upon your orator the power, rights, and privileges aforesaid was fully competent to enact and grant the same, and that at the time when your orator was granted and obtained the said exclusive right aforesaid that the same was in all things legal, binding, and operative, and did absolutely confer upon your orator the said exclusive privileges aforesaid, yet they pretend, allege, aver, publish, and cause to be published, and assert that the acts of the Legislature aforesaid conferring the rights aforesaid upon your orator —; that a convention of the people of the State of Louisiana has been by due authority called together, and that the constitution of the State of Louisiana in force in 1877 and 1878 has been abrogated, annulled, and set aside, and that an entirely new constitution and organic law of the said State was adopted in 1879, containing among other things a provision which they assert has repealed, abrogated, and absolutely destroyed all that portion
25 of the charter of your orator which conferred the said exclusive right.

And your orator further shows unto your honors that the said defendant, The Saint Tammany Water Works Company, has been and is taking active steps to cause your orator serious damage, loss of credit, and to impair its operations, and to that end they hold out and assert that they have under their control a large and unlimited amount of money and credit, and threaten and hold out that they intend, by a system of conduits and pipes, to bring into the city of New Orleans the waters of the Bogue Falaya river, in the parish of St. Tammany; to lay mains and pipes through the streets of the city of New Orleans, parallel with those of your orator, and to connect the same with the houses and buildings of the inhabitants of the said city of New Orleans, and to set up, establish, and operate in all parts of the city of New Orleans a rival and competing water works system.

26 And your orator further shows unto your honors that, in furtherance of their said scheme of wrong and with the intention of injuring your orator and impair[ing] its credit, the said defendant has caused to be introduced and, as your orator is informed, has secured the passage of an act of the Congress of the United States permitting the said defendant the right of way through public

lands and leave and permission to lay pipes and mains under and across Lake Pontchartrain, a navigable water of the United States, in order to bring the said water of the said Bogue Falaya river within the limits of the city of New Orleans for distribution in the present system of water works.

And your orator further shows unto your honors that the said defendant, The Saint Tammany Water Works Company, has entered into negotiations with or has solicited the city of New Orleans to aid it in its said scheme by the adoption of some ordinances, where-
27 by the city of New Orleans shall in form grant unto the said Saint Tammany Water Works Company the right to erect and establish the said water works within the said city, to lay down the said parallel mains and pipes, and in all things enter into competition with your orator and invade and destroy in so far as it can the said exclusive rights and privileges of your orator.

And your orator further shows unto your honors that it is informed and believes that the council of the city of New Orleans, or some of them, hold out and pretend that they have the right and authority, under and by virtue of the said provisions of the constitution of the State of Louisiana adopted in 1879, to wit, article 258 thereof, to absolutely ignore and hold for naught, not only the warranty contained in their said act of sale, by which the said water works were conveyed to your orator, but to ignore the estoppel which has grown up and exists by virtue of their said relation to
28 the said company and the obligations of the said city of New Orleans, which have been converted into the stock of the said company, as hereinbefore set forth, and that they will actively collude with and join with the said defendant, The Saint Tammany Water Works Company, to the extent in so far as they can, to grant to the said Saint Tammany water works the right and privilege to invade the exclusive rights of your orator, and to set up, construct, establish, and operate within the said city of New Orleans a competing system of water works and water supply.

And your orator further shows unto your honors that, in view of the fact that the capital stock of your orator is entirely made up by the exchange of the actual obligations and evidences of debt of the city of New Orleans, as aforesaid, your orator is entirely dependent for the money necessary to carry out faithfully its obligations under the said acts of the Legislature upon its credit and ability to borrow money and upon the earnings of the said water works
29 company, and that your orator accepted the conditions of the said charter solely because the same did grant unto your orator the exclusive right of supplying the said city with water by a system of public water works for the said period of fifty years, and that thereby the said company would necessarily obtain and have credit in the money market and be able to obtain the funds requisite to carry out the said obligation, and that under no circumstances would your orator or the shareholders therein have surrendered the obligations of the city of New Orleans in exchange for the stock of the said company had it not been for the said exclusive right so conferred as aforesaid—all of which the said de-

fendant, The City of New Orleans, well knew; that if the said defendants are permitted to tamper with, i-vade, or destroy the said exclusive right of your orator, or by their acts to impair the public belief and faith therein, the rights of the stockholders in the
30 said corporation would be absolutely destroyed; that it is impossible for two systems of water works to subsist with profit in the city; and, further, that it is utterly impossible for your orator to carry out the obligations imposed upon it by the said acts of the Legislature without the full and unimpaired right to fix or establish the rate to be paid for water in the city of New Orleans, as provided in the said act, subject only to the limitations therein set forth; that if the said defendant, The Saint Tammany Water Works Company, is permitted to assert, hold out, and represent that the object and purposes for which their said alleged corporation is created are lawful and have any force and effect, and if they are aided in their said wrongful acts by any pretended grant, right, or connivance upon the part of the said defendant, The City of New Orleans, your orator and the shareholders in the said corporation are left in the position of having converted their valid sub-
31 sisting obligations of the city of New Orleans into stock of the said water works company to be destroyed and rendered absolutely worthless by the connivance and combination of the said city of New Orleans with the said defendant, the said Saint Tammany Water Works Company, under cover of a pretended repeal of the rights of your orator in the said constitution of 1879.

And your orator further shows unto your honors that the said wrongful acts of the said defendants as already committed as aforesaid have had the effect to impair and depreciate the credit of your orator to such an extent that her mortgage bonds, already issued, have become largely depreciated in the market, and that the capital stock of the said company has been by the said acts of the said defendants, and as a direct consequence thereof, depreciated in value to at least sixty thousand dollars ($60,000.00), and your orator put in such position that it cannot use its credit to borrow money without large sacrifices and with the sale of its bonds at a large
32 and increased depreciation.

And your orator further shows unto your honors that it is advised and verily believes that unless arrested in its course of wrong by an order and decree of this honorable court the said defendants will proceed with and carry out their said scheme of wrong, and thereby cause your orator in the immediate future large additional damage, loss, and inconvenience.

And your orator further shows unto your honors that it is advised and verily believes that it is in all things fully protected and guaranteed in its said exclusive rights aforesaid under and by virtue of the provisions and guarantees contained in the Constitution of the United States; that the said pretended enactment or provision of the constitution of the State of Louisiana set up, asserted, and relied upon by the said defendants is, in so far as the same affects the rights of your orator, absolutely null and void and of no effect.

33 And your orator further shows unto your honors that it is informed, advised, and verily believes that the said pretended charter of the said defendant, The Saint Tammany Water Work- Co., in so far as it sets up and sets forth the purposes and objects to be accomplished by the said corporation, are null and void and prohibited by law, and in direct, open violation and invasion of the rights of your orator in the premises, and that the effort of the said persons to organize and set on foot the said St. Tammany Water Works Co. to avail themselves of the general legislation of the State on the subject of corporations, in order to invade under cover of the said statutes the said exclusive rights of your orator, are a fraud upon the rights of your orator, and are not warranted and justified in law, equity, and good conscience.

And your orator further shows unto your honors that all of the said acts and doings of the said defendants are contrary to equity and good conscience.

34 To the end, therefore, that the said defendants may, if they can, show unto your honors why your orator should not have the relief herein and hereby prayed for, your orator prays that the said defendants, and each of them, may full, true, complete, and adequate answer to the premises make, and that your honors grant and allow unto your orator the most gracious writ of injunction both provisionally and perpetually enjoining, inhibiting, and restraining the said defendant, the said Saint Tammany Water Works Company, from asserting, pretending, alleging, or publishing or holding out that they have acquired or can acquire under and by virtue of their said alleged character any right, power, or privilege enabling them to bring into the city of New Orleans, by conduits, pipes, or other devices, the waters of the said Bogue Falaya river, or any stream or river or fountain, or to establish, set up,

35 erect, or carry on, [or] threaten to establish, erect, or carry on, any system of public water works within the limits of the city of New Orleans to supply the said city or the inhabitants thereof with water; from laying down mains, pipes, or resorting to any other means to establish and set up in the said city of New Orleans any system of water distribution or supply; from selling or offering to sell or supply any of the inhabitants of the said city with water supply, for hire or otherwise, during the entire period of the said fifty years from the said thirty-first day of March, A. D. 1877, or from doing any other act or thing which can or will in any manner interfere with the rights of your orator in the premises.

And that your honors also grant and allow unto your orator a writ of injunction, directed to the said defendant, The City of New Orleans, enjoining the said defendant from making or attempting to make in any form any grant or pretended grant to the said

36 St. Tammany Water Works Company, or to any other corporation or persons whatsoever, any right to set up within the limits of the city of New Orleans any system of public water works in competition with those of your orator; from permitting the said Saint Tammany Water Works Co., or any other person, without the consent of your orator, to excavate in the streets of the city of New

Orleans for the purpose of laying any mains, pipes, or establishing and constructing any system of water works or means for distributing water in and through the said city of New Orleans in competition with your orator during the entire period of fifty years from and after the said thirty-first day of March, 1877.

And may it please your honors, upon the hearing of this cause, to adjudge and decree that at the time the said Legislature of the State of Louisiana granted and conferred upon your orator the said exclusive right to supply the city of New Orleans with water by
37 a system of public water works for the said period of fifty years that the said Legislature had full, competent, and adequate power to make the said grant; that when the said city of New Orleans accepted the terms of the said act, and the said stock was subscribed by the said city of New Orleans and by the other holders of the said water works bonds, and the said corporation, the New Orleans Water Works Company, organized thereafter and accepted the terms and provisions of the said act, and said city of New Orleans so conveyed the said water works and its said rights acquired from the Commercial Bank of New Orleans as aforesaid, the same became and was a legally binding contract, with obligations resting as well upon the city of New Orleans and the State of Louisiana as upon your orator; and that the same became in all things irrepealable, except by and with the consent of your orator; and that the city of New Orleans, by its acts, became and was and is estopped from *the* denying the validity of the said obligation, and
38 from attempting in any manner or by any means to lessen the full value and import thereof; that the State of Louisiana became bound under and by reason of the provisions of the Constitution of the United States to observe full and exact faith about and concerning every obligation in the said contract; and that the said defendants, the said Saint Tammany Water Works Company, cannot in law avail themselves of any legislation of the State of Louisiana to impeach or impair the same; and that the said article, No. 258, of the constitution of the State of Louisiana, adopted in 1879, and all other provisions in the said constitution which in any way *in* the face thereof impair or limit, to any degree, the full range and effect of the said obligation existing under the said charter of your orator are, in so far as your orator is concerned, absolutely null, void, and of no effect; and, further, that your honors adjudge
39 and decree that your orator has in all things observed and faithfully carried out the obligations of the said contract binding upon your orator, and that your orator has the full, complete, absolute, and inalienable right for the said period of fifty years from the said thirty-first day of March, A. D. 1877, of supplying water to the city of New Orleans and the inhabitants thereof by any system of public water works, whether the water be taken from the Mississippi river or from any other stream, source, or fountain, to the exclusion of all other persons and corporations whatsoever.

And may it please your honors to grant unto your orator a restraining order and injunction against the said defendants, *pendente lite*, to the range, extent, and effect as hereinbefore prayed.

And may it please your honors to also grant unto your orator the most gracious writ of subpœna, directed to the said defendant, The City of New Orleans, and the said defendant, The St. Tam-
40 many Water Works Company, in due form, commanding them, and each of them, to be and appear in this honorable court before your honors on some day certain in the said writs to be named, and, under a certain penalty therein to be named, full, complete, and adequate answer to the premises make [and] to stand to and abide all such orders and decrees as your honors may make in the premises.

And may it please your honors to further grant unto your orator such other and further relief in the premises as the nature of their case may require and as to your honors may seem meet and just; and they will ever pray, etc.

(Signed) E. H. FARRAR, *Solicitor.*
(Signed) J. R. BECKWITH, *Counsel.*

EASTERN DISTRICT OF LOUISIANA, *ss:*

Albert Baldwin, being duly sworn, deposeth and saith that he is — of said New Orleans Water Works Company, com-
41 plainant in the above bill of complaint; that he knows the contents thereof; that all of the matters set forth in said bill of complaint are true of his own knowledge, except such matters as are therein set forth upon information and belief, and that as to all such matters he verily believes the same to be true as therein set forth, and further saith not.

(Signed) ALBERT BALDWIN,
President New Orleans Water Works Company.

EXHIBIT A. Annexed to and filed with the foregoing bill of complaint July 24th, 1882.

Charter.

STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans:

Be it known that on this second day of May, in the year of our Lord one thousand eight hundred and eighty-two, before me, Samuel Flower, a notary public in and for the parish of Orleans, State of Louisiana, duly commissioned and qualified, and in the
42 presence of the witnesses hereinafter named and undersigned, personally came and appeared Messrs. Davidson B. Penn, David Hughes, Gilbert L. Hall, David R. Calder, Allen Jumel, George Purves, Robert E. Rivers, Francis J. Quinlan, John Calder, Charles Lessassier, Adam Thomson, Philip K. Thompson, and J. Hassinger, A. H. Sieward, and J. J. Langles, all of the city of New Orleans, who severally declared that, availing themselves of the powers, rights, and privileges conferred by the laws of this State relative to the organization of corporations, they do by these presents form, organize, and constitute themselves a corporation for the object and purpose as shall be hereinafter set forth, and to that end

do covenant and bind themselves, and all others who may hereafter become associated with them, to be governed by the following stipulations, obligations, and regulations as articles of the charter of said corporation:

Article first.

The name and style of said corporation shall be the St
43 Tammany Water Works Company, and by that name it shall have succession and corporate existence for and during the full term and period of ninety-nine years from the date hereof, unless sooner dissolved or liquidated in the manner hereinafter provided for, and shall have power and authority to contract, to sue and be sued, to make and use a corporate seal, and the same to break and change at pleasure; to acquire, receive, purchase, and hold, as well as to convey, mortgage, and hypothecate, under its corporate name, property, both real and personal; to obtain, by grant or otherwise, from the Federal Government, or from the State of Louisiana, or from any parish, city, or village, any rights, privileges, or franchises that any of said Federal, State, parish, city, or village governments may choose to grant or convey in aid of or in reference to the construction, establishment, or maintenance of the water works which are hereinafter declared to be the object and purpose of this corporation; to borrow money or to purchase or
44 lease property on its own credit for the purpose of constructing and maintaining such water works, and, as evidence of the indebtedness of said company for such loans or purchases or lease of said property, to issue its corporate bonds or promissory notes, bearing interest at such rate per annum as its board of directors may elect; for securing the payment of said bonds or notes, to mortgage and pledge its works, its capital stock, its corporate franchises, and any of its real or personal property, or any portion of the same; to name and appoint such managers, directors, and officers as its interest and convenience may require; to make, establish, alter, and amend such by-laws and rules for the proper management and regulation of its affairs as may be necessary and proper, and generally to have, possess, and enjoy all the powers and privileges which corporations are or may be, by any general law of this State, authorized to possess.

Article second.

45 The domicile of said corporation shall be in the city of New Orleans. Citation or other legal process shall be served on the president, or, in his absence, on the vice-president, or in the absence of both these officers, upon the secretary.

Article third.

The object and purpose for which this corporation is established and the nature of the business to be carried on by it are declared to be to furnish and supply the inhabitants of the city of New Orleans and other localities contiguous to the line of its works with an am-

ple supply of pure, clear, and wholesome water from such rivers, streams, or other fountain sources as may be found most available for such purpose; and to that end to raise and construct, dig, or cause to be opened, such canals and trenches, to lay such pipes and conduits, and to construct, erect, maintain, and operate all such works, stand-pipes, engines, machinery, and buildings, and to procure such rights of way, franchises and privileges as may be necessary or available to carry out the purposes and object of this company.

Article fourth.

The capital stock of this corporation is hereby declared to be two million dollars, divided into or represented by twenty thousand shares of one hundred dollars each, which said capital stock may be increased or reduced to such an amount as may be determined by a vote of stockholders in favor of such increase or reduction, holding the larger amount in value of the stock, at a meeting convened and held for that purpose, after thirty days' notice in one or more of the daily newspapers published in the city of New Orleans.

The time and manner of subscription for and payment of stock shall be such as may be determined by the board of directors: Provided, That no more than ten dollars per share shall be called for at one time and not oftener than once in sixty days.

In case of failure on the part of any subscriber to pay the installments on his stock as required, the board of directors shall have the option, after thirty days' notice to the said delinquent, which notice may be given in a general form, addressed to all delinquents without naming them, and published in two of the daily newspapers of the city of New Orleans, of forfeiting the stock of said delinquent, or the amount previously paid thereon, and no stockholder shall have the right to vote while delinquent or in default.

No stockholder shall ever be held liable or responsible for the contracts or faults of the said corporation in any further sum than the unpaid balance due to the company on the shares of stock owned by him, nor shall any mere informality in organization have the effect of rendering this charter null or of exposing any stockholder to any liability beyond the amount of his stock, as above defined. After stock has been subscribed for the board of directors may allow payment thereof to be made in transfer of property to said corporation.

Article fifth.

The business and affairs of this corporation shall be managed and conducted by a board of directors consisting of nine stockholders, each of whom shall hold, in his own name or in the name of the commercial firm of which he may be a member, at least ten shares of its capital stock, and five of whom shall constitute a quorum for the transaction of business. At the first meeting after election they shall elect, from their own number, a president and vice-president. They shall also elect a secretary and

treasurer, and shall have authority at any time to elect or appoint such other officers, clerks, or employees as they may deem necessary for the management and protection of the affairs, interest, and business of said corporation and to remove the same at pleasure.

Should any vacancy occur in the board of directors by death or resignation the same shall be filled by election by the surviving or remaining members.

The first board of directors shall consist of Messrs. David-
49 son B. Penn, David Hughes, F. J. Quinlan, Gilbert L. Hall, David R. Calder, Robert F. Rivers, John Calder, Allen Jumel, and J. J. Langles, who shall continue in office until their successors are elected and qualified, as hereinafter provided, and who shall have authority to elect a president and vice-president, treasurer and secretary, and to appoint such other officers as they may deem necessary, to hold their offices until their successors are elected or appointed in accordance with the provisions of this charter.

Article sixth.

The first election for directors shall be held on the first Tuesday in February, eighteen hundred and eighty-three, and subsequent elections annually thereafter, due notice of which elections shall be given by publication in two of the daily newspapers published in the city of New Orleans for at least ten days immediately preceding such election day.

All elections and all votes at a general meeting of the stockholders shall be by ballot, under the superintendence of three com-
50 missioners appointed from the stockholders by the board of directors, and a majority of the votes cast will be required to elect.

Each share of stock will be entitled to one vote, either in person or by proxy, provided that no stockholder shall have the right to vote on any share or shares of stock that have not stood in his name for at least sixty days preceding such election. The board of directors thus elected shall enter upon their duties immediately after their election. Should there be a failure to elect a board of directors at the time fixed for the annual meeting for that purpose, a special meeting shall be called for said purpose in the manner provided for the annual meeting. A failure to elect a board of directors shall not forfeit this charter, but the directors in office shall continue in the exercise of their duties and functions as such until their successors shall be elected & enter upon their duties.

Article seventh.

The stockholders of this company, at a general meeting to
51 be convened for that purpose, after at least thirty days' notice in two of the daily newspapers published in the city of New Orleans, may make any modifications, additions, or changes in this charter or act of incorporation, or may even dissolve the same or direct the liquidation of its affairs, with the assent of three-fourths of the stock represented at such meeting.

Article eighth.

The liquidation of the affairs of this company or corporation, whenever they shall be dissolved, either by limitation of charter or from any cause whatever, or the said liquidation be determined on as above provided, shall be conducted by three commissioners to be appointed by the board of directors, who shall also fix their compensation, which commissioners shall remain in office until the final liquidation of its affairs, and shall exercise all the corporate powers and functions necessary for the settlement and liquidation of said affairs, with power to fill any vacancies which may occur in their number.

52 Thus done and passed at my office, in the city of New Orleans, in the presence of S. C. Hepburne and Thos. J. Keane, competent witnesses residing in said city, who have hereunto signed their names, together with the said appearers and me, notary, the day, month, and year first above written.

Original signed:

D. B. PENN.
G. L. HALL.
ALLEN JUMEL.
R. E. RIVERS.
JOHN CALDER.
A. THOMSON.
JUSTIN J. LANGLES.
J. HASSINGER.
DAVID HUGHES.
D. R. CALDER.
GEO. PURVES.
F. J. QUINLAN.
CHAS. LESSASSIER.
P. K. THOMPSON.
A. H. SIEWARD.

Witnesses:
SAM'L C. HEPBURNE.
THOS. J. KEANE.

SAM'L FLOWER,
Notary Public.

I, the undersigned, recorder of mortgages in and for the parish of Orleans, State of Louisiana, do hereby certify that the above and foregoing act of incorporation of the "St. Tammany Water Works Company" was this day duly recorded in my office, in book 226, folio 98.

53 New Orleans, May 6, 1882.

EUGENE MAY, *Recorder.*

STATE OF LOUISIANA, *Parish of Orleans:*

I, Samuel Flower, a notary public in and for the said parish and State, duly commissioned and qualified, do certify the foregoing to be a true and correct copy of the original charter of the "St. Tam-

many Water Works Company" of record in my office, as also of the certificate of the recorder of mortages in and for this parish attached thereto.

Witness my hand and official seal at the city of New Orleans this tenth day of May, A. D. 1882.

SAM'L FLOWER,
Notary Public.

Order on Bill.

Let the defendants show cause on the first Monday of November next (1882), why the injunctions *pendente lite* prayed for should not issue with leave to set down an earlier day should either of
54 the judges authorized to hold the circuit court for the eastern district of Louisiana come into the district prior thereto and direct the same.

And let a restraining order issue to the St. Tammany Water Works Company in the terms prayed in the bill to run until the further order of the court, or of the judges thereof, upon complainants giving bond in the sum of twenty thousand dollars, with good security, to be approved by the clerk of the court, conditioned to pay all damages sustained by said water works company should such restraining order be adjudged to have been improperly or improvidently granted.

And leave is given to apply hereafter for a like restraining order against the city of New Orleans should events hereafter warrant the same.

July 28th, 1882.

(Signed) DON A. PARDEE, *Judge.*

Subpœna in Chancery to the St. Tammany Water Works Com-
55 *pany. Issued July 24th,* 1882.

UNITED STATES OF AMERICA:

The President of the United States to the marshal for the eastern district of Louisiana, Greeting:

You are hereby commanded to summon the Saint Tammany Water Works Company to appear before the honorable the judges of the fifth judicial circuit of the United States of America at a circuit court to be holden on the first Monday of September, 1882, then and there to answer a bill in chancery filed against it and others, wherein the New Orleans Water Works Company is complainant and said Saint Tammany Water Works Company and others are defendants.

Herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, this 24th
56 day of July, in the year of our Lord one thousand eight hundred and eighty-two, and the 107th year of American Independence.

[SEAL.] (Signed) T. V. COUPLAND,
D'y Clerk.

The defendant is hereby notified that it is required to enter its appearance in the clerk's office of the United States circuit court on or before the first Monday of September, 1882; otherwise the bill may be taken *pro confesso*.

(Signed) T. V. COUPLAND,
D'y Clerk.

Marshal's Return.

Received July 24th, 1882, by the U. S. marshal, and on the same day, month, and year I served a copy of the within subpœna in chancery on D. B. Penn, Esq., president of the St. Tammany Water Works Co. by handing the same to him in person in the city of New Orleans.

July 24th, 1882.

(Signed) JOSEPH DEVONSHIRE,
D'y Marshal.

57 *Subpœna in Chancery to the City of New Orleans. Issued July 24th*, 1882.

UNITED STATES OF AMERICA:

The President of the United States to the marshal for the eastern district of Louisiana, Greeting:

You are hereby commanded to summon the city of New Orleans to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday of September, 1882, then and there to answer a bill in chancery filed against it and others, wherein the New Orleans Water Works Company is complainant and said City of New Orleans and others are defendants.

Herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, this 24th
58 day of July, in the year of our Lord one thousand eight hundred and eighty-two, and the 107th year of American Independence.

[SEAL.] (Signed) T. V. COUPLAND,
D'y Clerk.

The defendant is hereby notified that it is required to enter its appearance in the clerk's office of the United States circuit court on or before the first Monday of September, 1882; otherwise the bill may be taken *pro confesso*.

(Signed) T. V. COUPLAND,
D'y Clerk.

Marshal's Return.

Received July 24th, 1882, by the U. S. marshal, and on the same day, month, and year I served a copy of the within subpœna in

chancery on Joseph A. Shakespeare, Esq., mayor of the city of New Orleans, by handing the same to him in person in the city of New Orleans.

July 24, '82.

(Signed) JOSEPH DEVONSHIRE,
D'y Marshal.

59 *Affidavit of J. D. Houston. Filed July 24th,* 1882.

Circuit Court of the United States for the Eastern District of Louisiana.

THE NEW ORLEANS WATER WORKS COMPANY
vs.
THE CITY OF NEW ORLEANS & THE ST. TAMMANY WATER WORKS CO. } No. 10031.

Affidavit.

EASTERN DISTRICT OF LOUISIANA, *ss:*

J. D. Houston, being first duly sworn, deposeth and saith that he knows the contents of the bill of complaint filed in this cause, and that he verily believes the matters therein set forth to be true; that he is a stockholder in the New Orleans Water Works Company; that the persons interested in the St. Tammany Water Works Co. pretend and hold out that by reason of the provisions of the constitution of Louisiana adopted in 1879 the plaintiff has lost all right to the exclusive right to water works in the city of New Or-
60 leans, and that he believes that they have convinced some of the members of the city council of New Orleans that such is the fact; that they have applied to said council and presented for adoption to said council an ordinance granting them the right to establish a rival and competing system of water works in said city; that said council have referred the same to a committee for consideration and report; that he is informed that engineers have been appointed to assist said committee, and that he verily believes from information in his possession that a majority of said council will vote for said ordinance.

That the acts of the said defendants have already caused the market value of the stock in said New Orleans Water Works Company to fall at least three dollars per share, and that the adoption of said ordinance will depress the value thereof beyond any present power to estimate; that if the said rival water works company is permitted to go on and commence its proposed works the credit
61 and power of the plaintiff to anticipate its earnings by loans on its mortgage bonds will be lost entirely, and will in all things amount to the total loss of the water-works bonds converted into stock, and the absolute destruction of the grant and privileges contained in their charter, upon the faith of which they exchanged their water-works bonds for said stock, and will in all things operate a fraud upon their just right.

(Signed) J. D. HOUSTON.

Sworn & subscribed before me this 24th July, 1882.
[SEAL.] (Signed) THEO. GUYOL, *N. P.*

Bond for Restraining Order. Filed August 2d, 1882.

Know all men by these presents that we, the New Orleans Water Works Company, as principal, and James D. Houston, of the city of New Orleans, as surety, are firmly bound unto the St. Tammany Water Works Company in the full sum of twenty thousand dollars, lawful money of the United States; for the payment whereof
62 well and truly to be made, we do hereby firmly bind ourselves, our successors, heirs, and legal representatives, firmly by these presents, as witness our hands and seals hereto affixed this second day of August, A. D. 1882.

The condition of this obligation is such that whereas the said New Orleans Water Works Company, above bounden, did, on the 24th day of July, A. D. 1882, file an exhibit in the circuit court of the United States for the eastern district of Louisiana, its bill in equity against the above-named St. Tammany Water Works Company and the city of New Orleans, said suit being No. 10031 of the docket of said court; and whereas, on due application therefor, the Hon. Don. A. Pardee did grant and allow a restraining order in said cause, as prayed for in said bill of complaint, against the said St. Tammany Water Works Company, as appears by said order of record in said cause:

Now, therefore, if the said New Orleans Water Works
63 Company shall well and truly pay, or cause to be paid, unto the said St. Tammany Water Works Company all such damages as the said St. Tammany Works Company shall recover against the said New Orleans Water Works Company in the event it shall be determined that said restraining order, so granted as aforesaid, was improperly or improvidently granted and allowed, then and in that case this obligation shall be null and void, but otherwise in full force and effect.

[SEAL.] (Signed) THE NEW ORLEANS WATER WORKS CO.,
A. BALDWIN, *President.*
(Signed) J. D. HOUSTON.

STATE OF LOUISIANA, *Eastern District of La.:*

Personally appeared James D. Houston, who, being duly sworn, deposes and says that he is the surety on the foregoing bond; that he resides on St. Charles street, city of New Orleans, Louisiana, and is worth the full sum of twenty thousand dollars over and above
64 all of his debts and liabilities and property exempt from execution.

(Signed) J. D. HOUSTON.

Sworn & subscribed before me this 2d day of August, 1882.
[SEAL.] (Signed) T. V. COUPLAND,
Deputy Clerk U. S. Circuit Court, Eastern Dist. of La.

Restraining Order. Issued August 2d, 1882.

UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Judicial Circuit and Eastern District of Louisiana.

NEW ORLEANS WATER WORKS COMPANY
vs.
ST. TAMMANY WATER WORKS COMPANY & *al.* } No. 10031.

The President of the United States to the St. Tammany Water Works Company, Greeting:

Whereas his honor, Don. A. Pardee, judge of our said court, did, on the 28th day of July, 1882, make, grant, and allow in said cause the following order, to wit:

65 "Let the defendants show cause on the first Monday of November next (1882) why the injunctions *pendente lite* prayed for should not issue, with leave to set an earlier day should either of the judges authorized to hold the circuit court for the eastern district of Louisiana come into the district prior thereto and direct the same.

"And let a restraining order issue to the St. Tammany Water Works Company in the terms prayed in the bill, to run until the further order of the court or of the judges thereof, upon complainants giving bond in the sum of twenty thousand dollars, with good security to be approved by the clerk of the court, conditioned to pay all the damages sustained by said water works company should such restraining order be adjudged to have been improvidently granted.

"And leave is given to apply for a like restraining order against the city of New Orleans should events hereafter warrant the same.

"July 28th 1882.

(Signed) "DON A. PARDEE, *Judge.*"

66 And the same is of record in this cause; and, whereas the said complainant has complied with said order:

Now, therefore, until the further order of the court in the premises, you, the said St. Tammany Water Works Company, defendant, your officers, agents, servants, and attorneys, are restrained and inhibited from asserting, pretending, alleging, or publishing, or holding out that they have acquired or can acquire, under and by virtue of their said alleged charter, any right, power, or privilege enabling them to bring into the city of New Orleans, by conduits, pipes, or other devices, the waters of the said Bogue Falaya river, or any stream, or river, or fountain; or to establish, set up, erect, or carry on, or threaten to establish, erect, or carry on, any system of public water works within the limits of the city of New Orleans to supply the said city or the inhabitants thereof with water; from the laying down
67 mains, pipes, or resorting to any other means to establish and set up in the said city of New Orleans any system of water distribution or supply; from selling or offering to sell or supply any of the

inhabitants of the said city with water supply, for hire or otherwise, during the entire period of the said fifty years from the said thirty-first day of March, A. D. 1877; or from doing any other act or thing which can or will in any manner interfere with the rights of complainant in the premises.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of New Orleans, this 2d day of August, A. D. 1882.

[SEAL] (Signed) T. V. COUPLAND,
D'y Clerk.

Marshal's Return.

Received August 2d, 1882, by the U. S. marshal, and on the same day, month, and year I served a copy of the within restraining order on the St. Tammany Water Works Company by handing the
68 same to D. B. Penn, Esq., president of the aforesaid company, at his office, No. 9 Carondelet St., in the city of New Orleans. August 2d, 1882.

(Signed) JOS. DEVONSHIRE,
D'y Marshal.

Plea of St. Tammany Water Works Company. Filed Sept. 4th, 1882.

United States Circuit Court for the Fifth Circuit and Eastern District of Louisiana.

THE NEW ORLEANS WATER WORKS COMPANY
vs.
THE ST. TAMMANY WATER WORKS COMPANY *et al.* } No. 10031.

Now into court, by its undersigned solicitor, comes the St. Tammany Water Works Company, made defendant herein, and, not admitting, but especially denying, all the allegations thereof, excepts and demurs to the bill herein filed by complainant and to
69 the jurisdiction of this honorable court over this cause, on the ground that all of the parties to the bill of complaint and to these proceedings, complainant and defendants, are citizens of the State of Louisiana; and, reserving to this appearer the benefit of and all rights to all other pleas, exceptions, demurrers, and answers to said bill of complaint, prays to be dispensed from answering and further pleading thereto until this court hears and determines this exception and demurrer, and that it be maintained and complainant's bill be dismissed with costs.

(Signed) G. L. HALL,
Solicitor for St. Tammany Water Works Co., Def't.

Extract from Chancery Order-Book.

THE NEW ORLEANS WATER WORKS CO.
vs.
THE ST. TAMMANY WATER WORKS CO. *et al.* } No. 10031.

SEPTEMBER 4TH, 1882.

The St. Tammany Water Works Company, defendant herein, by G. L. Hall, its solicitor, this day files its plea to the complainant's bill of complaint.

70 *Appearance of City of New Orleans.*

Extract from Chancery Order-Book.

NEW ORLEANS WATER WORKS COMPANY
vs.
ST. TAMMANY WATER WORKS COMPANY. } No. 10031.

SEPT. 6TH, 1882.

The City of New Orleans, one of the defendants herein, by C. F. Buck, city attorney, its solicitor, has this day entered its appearance to the complainant's bill of complaint.

Order. Document Styled Plea, &c., Stricken from the Files, &c. Entered & Filed Sept. 13, 1882.

U. S. C. C., E. Dist. of La.

NEW ORLEANS WATER WORKS COMPANY
vs.
ST. TAMMANY WATER WORKS CO. *et als.* } No. 10031.

On motion of J. R. Beckwith and E. H. Farrar, solicitors for the complainant, and on suggesting to the court that the document herein filed by the defendant, The St. Tammany Water Works
71 Co., which is variously styled a plea, an exception, and a demurrer, and which is not sworn to by the defendant- nor certified to by *its* counsel, as required by the rules of the Supreme Court of the United States:

It is ordered by the court that said document be stricken from the files, that said defendants be notified of this order, and that said defendant- be given until the rule day in October to plead, answer, or demur in due form of law.

Sept. 13th, 1882.

(Signed) DON A. PARDEE, *Judge.*

Marshal's Return.

Received Sept. 13th, 1882, by the U. S. marshal, and on Sept. 14, '82, I served a true copy of the within order on St. Tammany Water

Works Co. by handing the same to D. B. Penn, president of said company, in person, in the city of New Orleans.

Sept. 14, '82.

(Signed) J. DEVONSHIRE,
D'y Marshal.

PHILADELPHIA BAR ASSOCIATION

72 *Motion & Order Fixing Hearing of Application for Injunction. Entered & Filed Sept. 18th, 1882.*

U. S. C. C't.

N. O. Water Works Co.
vs.
St. Tammany Water Works Co. } No. 10031.

On motion of T. M. Gill, solicitor for the St. Tammany Water Works Co., defendant, it is ordered that complainant's application for an injunction *pendente lite* herein be assigned for hearing on Monday, the 2d day of October, 1882, at 11 a. m., and that complainant have notice of the same.

(Signed) DON A. PARDEE, *Judge.*

Marshal's Return.

Received Sept. 18th, 1882, by the U. S. marshal, and on the following dates and manner I served true copies of within motion and order on the within-named persons, viz., J. R. Beckwith, p'lly, Sept. 19, '82, in this city; E. H. Farrar, p'lly, Sept. 25, '82, in this city.

73 Sept. 25, '82.

(Signed) J. DEVONSHIRE,
D'y Marshal.

Continuance of Application for Injunction..

Extract from the Minutes. Special Term, 1882.

New Orleans, Monday, *Oct. 2d*, 1882.

Court met pursuant to adjournment.

Present: Hon. Don. A. Pardee, circuit judge.

N. O. Water Works Company
vs.
St. Tammany Water Works Co. & *al.* } No. 10031.

Owing to the absence of J. R. Beckwith and E. H. Farrar, solicitors for the complainants, it was ordered by the court that the hearing of the application for an injunction pending suit be adjourned until to-morrow, at 12 o'clock m., and that complainant's solicitors be notified hereof.

Submission of Application for Injunction.

Extract from the Minutes of Oct. 3, 1882.

74 NEW ORLEANS WATER WORKS COMPANY
vs.
ST. TAMMANY WATER WORKS Co. *et al.* } No. 10031.

This cause came on this day to be heard on the complainant's application for an injunction *pendente lite*, and was argued by counsel for the complainant and for the defendant, The St. Tammany Water Works Company, respectively, and the court took time to consider.

Demurrer. Filed October 3d, 1882.

U. S. Circuit Court, E. Dist. of La.

NEW ORLEANS WATER WORKS COMPANY
vs.
ST. TAMMANY WATER WORKS Co. *et al.* } No. 10031.

The demurrer of the St. Tammany Water Works Company, one of the defendants, to the bill of complaint of the New Or-
75 leans Water Works Company, the above-named plaintiff.

This defendant by protestation, not confessing or acknowledging all or any of the matters and things in plaintiff's bill of complaint contained to be true in such manner and form as the same is therein set forth and alleged, doth demur to said bill, and for cause of demurrer showeth *that*—

1st. That this hon. court is without jurisdiction *ratione personæ*. All parties, plaintiff and defendants, *and* as appears upon the face of the plaintiff's bill filed herein, are citizens of the State of Louisiana.

2d. That this hon. court is without jurisdiction *ratione materiæ*. The matter in dispute, as appears upon the face of plaintiff's bill, is not sufficient to give this hon. court jurisdiction.

3. That there is no cause of action or complaint nor matter of equity set forth and alleged in plaintiff's bill, and were all the allegations in said bill contained true as therein set forth, which defendant does not admit, the said bill contains not any matter
76 of equity whereon to sustain such writ of injunction as is sought and prayed for in said bill, nor hath plaintiff in and by said bill stated and made such a case as doth or ought to entitle said plaintiff in this hon. court to any relief from or against this defendant touching the matters contained in the said bill or any of such matters.

Wherefore, and for divers other reasons and good causes of demurrer appearing in the said bill of complaint, this defendant doth demur to the said bill and to all the matters therein contained and humbly prays the judgment of this hon. court whether he shall be compelled to make any further or other answer to the said bill, and

he prays to be hence dismissed with his reasonable costs in this behalf sustained.

(Signed) G. L. HALL & T. M. GILL,
Solicitors for Def't.

I certify that in my opinion the foregoing demurrer is well founded in point of law.

77 (Signed) T. M. GILL,
Solicitor for Def't.

D. B. Penn, being sworn, says that he has read the foregoing demurrer, and that the same is not interposed for delay, and that he is the vice-president of and acting president of the St. Tammany Water Works Co.

(Signed) D. B. PENN.

Sworn to and subscribed before me this the 2d day of Oct., 1882.

(Signed) T. V. COUPLAND,
U. S. Commissioner.

Transfer. Filed October 3d, 1882.

UNITED STATES OF AMERICA.

STATE OF LOUISIANA, *Parish of Orleans, City of New Orleans:*

Be it known that on this ninth day of the month of April, in the year of our Lord one thousand eight hundred and seventy-eight, and of the Independence of the United States of America the 102d, before me, Gustave Le Gardeur, Jr., a notary public duly commis-

78 sioned and sworn in and for the parish and city aforesaid, therein residing, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared the Honorable Edward Pilsbury, mayor of the city of New Orleans, herein duly authorized in the full execution of these presents under and by virtue of resolution No. 4416, administration series, adopted by the council of the city of New Orleans, on the 26th day of March, 1878, a certified copy of which said resolution is hereto annexed for reference.

And also came and appeared Edward Toby, Esquire, of this city, herein appearing, stipulating, and acting for and in the name and on behalf and as president of the New Orleans Water Works Company, a corporation of this city, duly created by act No. 33 of the Legislature of this State, entitled "An act to enable the city of New Orleans to promote the public health, and to afford greater security against fire, by the establishment of a corporation to be called the New Or-

79 leans Water Works Company *Company;* to authorize the said company to issue bonds for the purpose of extending and improving the said works and to furnish the inhabitants of New Orleans an adequate supply of pure and wholesome water; to permit the holders of water-works bonds to convert them into stock, and to provide for the liquidation of the bonded and floating debt of the city of New Orleans," approved March 31st, 1877, and amended by act No. 43 of the Legislature of this State, entitled "An act relative

to the charter of the New Orleans Water Works Company and amending an act number thirty-three of the extra session of eighteen hundred and seventy-seven (1877)," approved February 26th, 1878, the said Edward Toby herein acting as president aforesaid, and duly authorized in the full execution of these presents *of these presents* under and by virtue of a resolution adopted by the board of directors of the said New Orleans Water Works Company at their sitting of the 8th day of April, 1878, a certified copy of which
80 said resolution is hereto annexed for reference, which said appearers in their respective capacity severally declared and said:

That in compliance with the provisions and requirements of said act No. 33, approved March 31st, 1877, as amended by said act No. 43, approved February 26th, 1878, the said New Orleans Water Works Company was duly organized.

That, in accordance with the public notice given by the mayor, the subscribers to the said capital stock of the said New Orleans Water Works Company have assembled together at the office of the Merchants' Mutual Insurance Company, No. 104 Canal street, in this city, on the thirtieth day of March, 1878, between the hours of 12 m. and 2 p. m., and that then and there, in compliance with the provisions of section 3 of said act No. 33 as amended by said act No. 43, they, the said subscribers, have elected the board of directors of the said New Orleans Water Works Company, as the whole
81 will more fully appear by the *procès-verbal* of the meeting of the said subscribers, a certified copy whereof is hereto annexed for reference.

That, in conformity with the provisions of said act No. 33 creating the said company, it, the said New Orleans Water Works Company, has transferred and delivered to the city of New Orleans, as is hereby acknowledged by the said Mayor Pilsbury, for and in the name of the city of New Orleans, all the certificates for the shares of stock of the said New Orleans Water Works Company, amounting to twenty thousand shares of one hundred dollars each, forming the capital stock of two millions of dollars ($2,000,000) of said company.

That, in further compliance with said act No. 33, approved March 31st, 1877, the stock thus transferred and delivered to the city of New Orleans, as aforesaid, has been disposed of by the said city in the manner following, to wit:

1st. Amount of stock full paid and not sub-
82 ject to assessment subscribed for by the city of New Orleans, six hundred and six thousand six hundred dollars ---------- $606,600 00

2d. Amount issued to the city in the proportion of one share of stock, full paid and not subject to assessment, for each and every one hundred dollars of water-works bonds funded in premium bonds, four hundred and fifty-one thousand four hundred dollars ---------- 451,400 00

3d. Amount issued to the city in the proportion of one share of stock, full paid and not subject to assessment, for each and every one hundred dollars of water-works bonds redeemed by the city, one hundred and eleven thousand five hundred dollars ---------- $111,500 00

4th. Amount exchanged by the city with the subscribers to the capital stock of the said New Orleans Water Works Company, in the proportion of one share of stock, full paid and
83 not subject to assessment, for each and every one hundred dollars of water works bonds surrendered by the said subscribers to the city, five hundred and one thousand six hundred dollars ---------- 501,600 00

5th. Amount reserved for the benefit of all holders of water works bonds who may elect to subscribe to the capital stock of the said New Orleans Water Works Company, to be exchanged by the city with the holders of said bonds in the proportion of one share of stock full paid and not subject to assessment for each and every one hundred dollars of said water-works bonds surrendered to the city, three hundred and twenty-eight thousand nine hundred dollars---------- 328,900 00

Total amount of stock transferred and delivered to the city, two millions of dollars ---------- $2,000,000 00

84 Now, therefore, by virtue of the foregoing, and in consideration of the two millions of dollars of stock hereinabove transferred and delivered to the city, the receipt whereof is hereby acknowledged by the said Mayor Pilsbury, he, the said Mayor Pilsbury, declared that by virtue of the authority in him vested by the resolution No. 4416, administration series, and in compliance with section 4 of said act No. 33, approved March 31st, 1877, creating the said New Orleans Water Works Company, he, the said mayor, does by these presents, in his said capacity and for and in the name and on behalf of the city of New Orleans, grant, bargain, sell, convey, transfer, assign, and set over with all legal warranties, and with full subrogation to all the rights and actions of warranty to which the city of New Orleans is or may be entitled against all preceding vendors and owners unto the said New Orleans Water Works Company, the said Edward Toby, as president aforesaid, accepting and purchasing for and in the name of the said New Orleans Water Works Company, and acknowledging due delivery
85 and possession thereof.

All and singular the property, real and personal, of whatever nature or kind soever, belonging to the water works constructed and established by the Commercial Bank of New Orleans and subsequently by the city of New Orleans, and the dykes, mounds, reser-

voirs, machinery and apparatus, engines, boilers, pumps, conduits, aqueducts, pipes, tools, and all appurtenances thereunto belonging or in anywise appertaining.

And the following real estate, to wit:

1st. A certain square of ground, together with the reservoirs, buildings, and all other improvements thereon, and the rights, servitudes, ways, privileges, and appurtenances thereunto belonging or in anywise appertaining, situate in the Faubourg Annunciation, in the first district of this city, designated by the No. eighteen on a plan of said faubourg drawn by B. Lafon, surveyor, dated the fifteenth day of May, 1807, which said square is bounded by Religious,
86 St. Thomas, formerly St. John the Baptist, Richard, and Market streets, and it has a front on each of the said streets of three hundred feet, and by a sketch made by J. A. D'Hémécourt, city surveyor, dated the 5th day of April, 1878, and hereto annexed for reference, the said square is designated by the No. eighty-three, and measures three hundred and nineteen feet eight inches and two lines front on Religious street, three hundred and nineteen feet ten inches and one line front on St. Thomas street, three hundred and nineteen feet eleven inches and one line front on Market street, and three hundred and nineteen feet ten inches and four lines front on Richard street.

2d. A certain piece or portion of ground, together with all the buildings and improvements thereon, and the machinery and apparatus, boilers, engines, iron chimney, and all the rights, privileges, servitudes, ways, and appurtenances thereunto belonging or in
87 anywise appertaining, situated in the suburb Lacourse, in the first district of this city, in the square bounded by New Levee, Tchoupitoulas, Richard, and Orange streets, and measuring one hundred and ninety-one feet nine inches and six lines front on New Levee street, one hundred and ninety-one feet nine inches and four lines front on Tchoupitoulas street, three hundred and eighty-three feet seven inches and three lines front on Richard street, and three hundred and eighty-three feet seven inches and three lines on a straight line running from the termination of the line on said New Levee street to the termination of the line on Tchoupitoulas street aforesaid, parallel to Orange street and dividing the said piece or portion of ground from the property now or formerly belonging to A. Caldwell and R. Toledano, which form- the remainder of said square, which is designated by the No. thirty-nine on the above-mentioned annexed sket-h by J. A. D'Hémécourt, according to which said sketch said piece or portion of ground measures
88 one hundred and ninety-one feet six inches and six lines front on New Levee street, one hundred and ninety-one feet seven inches & six lines front on Toledano street, three hundred and eighty-three feet seven inches and two lines front on Richard street, and three hundred and eighty-three feet and eight inches on said line dividing the said piece or portion of ground from the property of Caldwell and Toledano.

All of which said above-described property, real and personal, was acquired by the city of New Orleans by purchase from the Com-

mercial Bank of New Orleans by act passed before Andrew Hero, Jr., a notary public in this city, on the nineteenth day of January, 1869.

3d. A certain square of ground, together with all the rights, ways, privileges, and appurtenances thereunto belonging or in anywise appertaining, situate in the first district of this city, comprised
89 between Peters (late New Levee), Water, Orange, and Richard streets, and designated by the No. thirty-two A, as per plan drawn by Louis H. Pilié, surveyor, dated the 29th of June, 1867, and deposited for reference in the office of H. C. Dibble, a notary public in this city, as plan No. 19, according to which said plan said square is divided into twenty-eight lots numbered from one to twenty-eight, inclusive, and they measure as follows, to wit:

Lot No. one forms the corner of Water and Richard streets and measures twenty-six feet nine inches and two lines front on Water street, twenty-six feet nine inches and three lines in width in the rear by one hundred and nine feet and four inches in depth, and front- on Richard street.

Lots Nos. two to eleven, inclusive, adjoin each other and measure each twenty-six feet and seven inches front on Water street by one hundred and nine feet and four inches in depth between parallel lines.

Lot No. twelve forms the corner of Water and Orange
90 streets and measures twenty-six feet nine inches and two lines front on Water street, twenty-six feet nine inches and three lines in width in the rear by one hundred and nine feet and four inches in depth, and front- on Orange street.

Lots Nos. thirteen and fourteen adjoin each other and measure each twenty-six feet front on Orange street by one hundred and fifty-nine feet eight inches and four lines, more or less, in depth between parallel lines.

Lot No. fifteen forms the cornor of Orange and Peter- streets and measures twenty-six feet eight inches and six lines front on Peters street, twenty-six feet nine inches and four and a half lines in width in the rear by one hundred and nine feet and four inches in depth, and front- on Orange street.

Lots Nos. sixteen to twenty-five, inclusive, adjoin each other and measure each twenty-six feet and seven inches front on Peters street by one hundred and nine feet and four inches in depth between parallel lines.

91 Lot No. twenty-six forms the cornor of Peters and Richard streets, and measures twenty-six feet nine inches and five lines front on Peters street by one hundred and nine feet and four inches in depth and front- on Richard street.

Lots Nos. twenty-seven and twenty-eight measure each twenty-seven feet front on Richard street by one hundred and fifty-nine feet eight inches and four lines in depth between parallel lines.

And by the above-mentioned annexed sketch of J. A. D'Hémécourt said square is designated by the No. 21 B, and measures three hundred and nineteen feet four inches and four lines front on Water street, three hundred and nineteen feet five inches and three lines

front on Peters street, two hundred and seventy-two feet and eight inches front on Richard street, and same front on Orange street.

And the said square of ground was acquired by the city of New Orleans from John H. O'Connor by act passed before Andrew Hero,
Jr., a notary public in this city, on the sixteenth day of
92 July, 1872:

To have and to hold the herein-conveyed property unto the said New Orleans Water Works Company, its successors and assigns, forever, by virtue of these presents, subject, however, to the provisions of section 17 of said act No. 33, approved March 31st, 1877, as amended by said act No. 43, approved February 26th, 1878.

By reference to the annexed certificate of the register of conveyances it does not appear that the herein-conveyed property had been heretofore alienated by the said vendor.

And now the said parties hereto declared that they do hereby dispense with the certificate of the recorder of mortgages and exonerate the undersigned notary from any and all responsibility for the non-production of said certificate.

Thus done and passed in New Orleans, at my office, the day, month, and year first above written, in the presence of Messrs.
93 Armand Pitot, Jr., and Edouard Pitot, competent witnesses, who have signed with the said parties and me, notary, after reading the whole.

Original signed:

E. PILSBURY, *Mayor.*
EDWARD TOBY, *President.*
A. PITOT, JR.
EDW. PITOT.
G. LE GARDEUR, JR.,
Not. Pub.

Registered in conveyance-book No. 110, folio No. 453.
New Orleans, April 9th, 1878.
(Signed) D. B. PENN, *R. C.*

A true copy of the original on file and of record in my office.
New Orleans, April 12, 1878.
[SEAL.] (Signed) G. LE GARDEUR, JR.,
Not. Pub.

Motion Setting Down Demurrer for Hearing.

Extract from Chancery Order-Book.

THE N. O. WATER WORKS CO.
vs.
ST. TAMMANY WATER WORKS CO. *et al.* } No. 10031.

OCT. 5TH, 1882.

Now complainant comes, by J. R. Beckwith and E. H. Farrar, its solicitors, and this day set down for hearing the demurrer
94 of the St. Tammany Water Works Company filed herein.

Motion & Order Pro Confesso Against The City of New Orleans.

Extract from Chancery Order-Book.

THE N. O. WATER WORKS CO.
vs.
ST. TAMMANY WATER WORKS CO. *et al.*

OCT. 5TH, 1882.

On motion of J. R. Beckwith and E. H. Farrar, solicitors for complainant, and upon showing that The City of New Orleans, one of the defendants herein, entered its appearance to the said complainant's bill of complaint on the 6th day of September, 1882, and upon further showing that the said defendant, The City of New Orleans, has failed to plead, demur, or answer to the said bill of complaint:

It is therefore ordered that the said bill of complaint, as to the defendant, The City of New Orleans, be, and the same is hereby, in all matters and things taken as confessed.

95 *Order Allowing Injunction Pendente Lite.*

Extract from the Minutes of Oct. 11th, 1882.

NEW ORLEANS WATER WORKS COMPANY
vs.
THE ST. TAMMANY WATER WORKS CO. & CITY OF N. O. } No. 10031.

This cause came on to be heard on the application of the complainant for an injunction *pendente lite*, and was argued by counsel; on consideration whereof it is ordered and decreed that an injunction *pendente lite* issue, enjoining and inhibiting the defendant, The St. Tammany Water Works Company, in manner and form and to the extent prayed for in said complainant's bill of complaint on said complainant giving bond in the sum of twenty thousand dollars, with good and solvent security, to be executed before Theodore V. Coupland, Esq., one of the commissioners of this court, conditioned to repair all damages resulting to the defendants from the issuance of said injunction should it be hereafter de-
96 termined in this court, or on appeal, that said injunction was wrongfully or improvidently issued.

October 11th, 1882.
(Signed) DON A. PARDEE, *Judge.*

Motion & Order Setting Aside Pro Confesso. Entered & Filed November 6th, 1882.

Circuit Court, Fifth Circuit & Eastern Dist. of La. In Equity.

N. O. WATER WORKS COMPANY
vs.
ST. TAMMANY WATER WORKS CO. *et al.* } No. 10031.

On motion of Chas. F. Buck, solicitor for The City of New Orleans, one of the defendants herein, and suggesting to the court the annexed consent of solicitor for complainant—

It is ordered by the court that the judgment and order *pro confesso*, as against this appearer, entered on the — day of ——, 1882, be rescinded and set aside, with permission to said appearer, The City of New Orleans, to plead, answer, or demur as if said
97 *pro confesso* had not been taken on or before the next ensuing rule day.

Consent to Rescind Pro Confesso. Filed November 6th, 1882.

N. O. WATER WORKS CO.
vs.
ST. TAMMANY WATER WORKS CO. *et al.*

I hereby consent that the judgment *pro confesso* herein entered against The City of New Orleans be set aside, with leave to demur or plead as if said *pro confesso* had not been taken on or before the next ensuing rule day.

(Signed) E. H. FARRAR,
Sol'r for Complainant.

Motion & Order. Demurrer of St. Tammany Water Works Co. Assigned for Hearing. Entered & Filed Nov. 11th, 1882.

NEW ORLEANS WATER WORKS CO.
vs.
ST. TAMMANY WATER WORKS CO. *et al.* } No. 10031.

On motion of E. H. Farrar, solicitor for complainant,
98 ordered that the demurrers of the defendant be fixed for hearing on Saturday, the 18th day of November, at 11 o'clock, and that counsel be notified.

Notice taken.
(Signed) G. L. HALL,
Sol. for Def't.

Submission of Demurrer of St. Tammany Water Works & Co.

Extract from the Minutes. November Term, 1882.

NEW ORLEANS, SATURDAY, *November 18th*, 1882.

Court met pursuant to adjournment.
Present: Hon. E. C. Billings, district judge.

N. O. WATER WORKS COMPANY
vs.
ST. TAMMANY WATER WORKS CO. } No. 10031.

This cause came on to be heard on the demurrer of the defendant, The St. Tammany Water Works Company, and was argued by counsel for the respective parties and submitted, when the court took time to consider.

99 *Order. Demurrer of St. Tammany Water Works Co. Overruled.*

Extract from the Minutes of Nov. 20th, 1882.

N. O. WATER WORKS CO.
vs.
ST. TAMMANY WATER WORKS CO. } No. 10031.

This cause came on to be heard on the demurrer to the bill herein, filed by the St. Tammany Water Works Company, and was argued by counsel.

On consideration whereof it is ordered that the demurrer be overruled, with leave to said St. Tammany Water Works Company to file answer on or before the next rule day.

Demurrer of the City of New Orleans. Filed November 23d, 1882.

U. S. Circuit Court. In Equity.

N. O'LS WATER WORKS CO.
vs.
ST. TAMMANY WATER WORKS CO. *et al.* } No. 10031.

To the hon. the judges of the circuit court of the United
100 States for the fifth circuit and eastern dist. of La.:

And this defendant, The City of New Orleans, the judgment hereinbefore entered against her as *pro confessis* having been duly set aside without prejudice whatsoever, by protestation, not confessing nor acknowledging all or any of the matters and things in the complainant's bill to be true in such manner and form as the same are therein set forth and alleged, doth demur thereto, and for cause of demurrer showeth that the said complainant hath not, in and by said bill, made or stated such a cause as doth or ought to entitle him to any such relief as is therein sought or prayed for from or against this defendant.

Therefore this defendant demands the judgment of this hon. court whether she shall be compelled to make any further or other answer, plea, or defense to the said bill or any of the matters and things therein contained, and prays to be hence dismissed with her
101 reasonable costs in this behalf sustained.

(Signed) CHAS F. BUCK,
City Att'y, Solicitor for Defendant, The City of New Orleans.
WYNNE ROGERS,
Of Counsel.

I certify the foregoing demurrer in my opinion well founded and not taken for delay.

(Signed) C. F. BUCK, *Solicitor.*

The undersigned, mayor of the city of New Orleans, duly sworn, deposes and says that, to the best of his knowledge and belief, the foregoing demurrer is well founded in fact and in law and is not interposed for delay.

(Signed) W. J. BEHAN.

Sworn to before me this Nov. 22d, '82.
[SEAL.] W. O. HART,
Not. Pub.

Extract from Chancery Order-Book.

NEW ORLEANS WATER WORKS Co.
vs.
ST. TAMMANY WATER WORKS Co. } No. 10031.

NOVEMBER 25, 1882.

102 The City of New Orleans, one of the defendants herein, by C. F. Buck, city att'y, and Wynne Rogers, its solicitors, has this day filed its demurrer to the complainant's bill of complaint.

Demurrer of City of New Orleans Set Down for Hearing.

Extract from Chancery Order-Book.

NEW ORLEANS WATER WORKS COMPANY
vs.
ST. TAMMANY WATER WORKS Co. } No. 10031.

NOV. 26TH, 1882.

Now comes the complainant, by E. H. Farrar and J. R. Beckwith, its solicitors, and this day sets down for hearing the demurrer of The City of New Orleans to the complainant's bill of complaint.

Motion & Order. Demurrer of City of New Orleans Assigned for Hearing.

Extract from the Minutes of Nov. 30, 1882.

N. O. WATER WORKS Co.
vs.
ST. TAMMANY WATER WORKS COMPANY. } No. 10031.

103 On motion of E. H. Farrar and J. R Beckwith, attorneys for complainant, it is ordered that the demurrer herein filed by The City of New Orleans be set for trial for Thursday, the 4th day of January, 1883, at 11 o'clock a. m., and that counsel be notified.

Answer of St. Tammany Water Works Company. Filed January 3, 1883.

United States Circuit Court for the Eastern District of Louisiana.
In Chancery.

NEW ORLEANS WATER WORKS Co.
vs.
THE ST. TAMMANY WATER WORKS Co. *et al.* } No. 10031.

The defendant, The St. Tammany Water Works Company, not waiving its demurrer, nor any of its rights thereunder, but reserving and relying thereon, and only answering because said demurrers

have been overruled by this honorable court and ordered further answer to make, and not at all times hereafter saving and reserv-
104 ing unto itself all benefit and advantage of exception which can or may be had or taken to the errors, uncertainties, and other imperfections in the said complainant's said bill of complaint contained, for answer thereto or unto so much and such parts thereof as this defendant is advised is or are material or necessary for [it] to make answer unto, this defendant, for answering, saith :

That it admits the passage of the act of the Legislature of Louisiana named in paragraph one of complainant's bill of complaint, styled An act approved the first of April, 1833, &c., but is advised and verily believes that the General Assembly of the State of Louisiana had not the power and could not grant the exclusive right therein claimed, and submits the same to the judgment of the court.

Defendant knows nothing of the matters and things contained in paragraph two of complainant's bill of complaint, and does neither admit nor deny them, save that it believes that there was a water-works company, but that it is advised and verily believes that
105 there never existed the exclusive right and privilege as alleged and claimed, and submits the same to the judgment of the court.

Defendant knows nothing of the matters and things contained in paragraph three of complainant's bill of complaint, and does not admit nor deny them, save that it admits the act of the Legislature of the State of Louisiana therein referred to, and now and at all times says that it is advised and verily believes that there never existed the exclusive right and privilege as alleged and claimed, and submits to the judgment of the court that the Legislature of the State of Louisiana was never invested with the power to grant the said exclusive right and privilege as claimed.

Defendant knows nothing of the matters and things in paragraph four of complainant's bill of complaint, and neither admits nor denies them.

Defendant knows nothing of the matters and things in
106 paragraph five, six, and seven of complainant's said bill of complaint (save that it admits the passage of the act therein mentioned by the Legislature of the State of Louisiana and also said notarial act), and neither admits nor denies them.

Defendant knows nothing of the matters and things in paragraphs eight, nine, ten, eleven, twelve, thirteen, and fourteen in complainant's bill of complaint contained, save what is contained in the acts of the Legislature of Louisiana referred to, but it is advised and verily believes that complainant has no such exclusive rights and privileges as claimed, and submits the same to the judgment of the court as aforesaid.

Defendant does not know whether the matters and things mentioned in paragraph fifteen of complainant's bill of complaint are true or not true, but is advised and believes that the statements and conclusions, as well as said matters and things, as alleged in
107 said paragraph, are not true, and submits the same as legal questions to the judgment of the court.

Defendant admits and avers the truth of the facts as alleged in paragraph sixteen of complainant's bill of complaint.

Defendant admits and avers the truth of the facts as alleged in paragraph seventeen of complainant's bill of complaint in so far as it availed itself of the right to organize the St. Tammany Water Works Company under the general legislation of the State of Louisiana, and avers that it was and is duly and legally organized and incorporated, as more fully appears by a copy of said act of incorporation referred to in and made a part of complainant's bill of complaint. And defendant avers that in the incorporation of its said company *that* there was no intention of invading any of the rights of complainant, and that it is advised and verily believes that there has been no invasion of the rights of the said complainant,
but that it, your defendant, has the absolute right and au-
108 thority to carry out all the objects and purposes in said act of incorporation contained.

Defendant admits, in answer to paragraph eighteen of complainant's bill of complaint, that its charter, or a copy thereof, is filed with said bill as Exhibit A.

Defendant, in answer to paragraph nineteen of said bill, admits that upon obtaining its charter it asserted the right to carry out the objects and purposes contained therein, which right it now asserts and claims. Defendant denies that it has not and does not "question," but alleges the truth and the fact to be that it has and does "question," the right and power of the Legislature of the State of Louisiana to have granted the exclusive right and privilege, or of the complainant to exercise the same, as herein claimed by said complainant, and defendant is advised and verily believes that the Legislature of the State of Louisiana was not "fully competent," and never had the legal power to grant and confer the exclusive rights
and privileges claimed by complainant in its said bill of
109 complaint, and alleges that the same was never "legal," binding, and operative and did not absolutely confer on complainant said exclusive privileges and rights as claimed.

And defendant is further advised and verily believes that there was no contract existing between the State of Louisiana, the city of New Orleans, and said complainant, granting the exclusive right claimed by the said complainant, which the constitutional convention of the people of the State of Louisiana, or the Legislature thereof, or the municipal government of the city of New Orleans, could not at any time, as a police regulation, set aside, repeal, and abolish.

In answer to paragraph twenty of complainant's bill defendant denies that it took any steps with the intention to cause damage or loss of credit or injury to complainant, or to set up a rival or competing water-works system, but it alleges the truth and fact to be
that it did and does intend to actively carry out all the objects
110 and purposes in its act of incorporation contained and to supply the city of New Orleans and the inhabitants of the city of New Orleans with clear, pure, and wholesome water.

In answer to paragraph twenty-one of complainant's bill of com-

plaint defendant admits that the Congress of the United States has passed the act granting the right of way, as alleged by complainant, but defendant denies being a party to any scheme of wrong or that it intends to injure complainant or impair the credit of complainant.

In answer to paragraph twenty-two of complainant's bill of complaint defendant admits the truth of the allegations contained in the paragraph, in so far as negotiations with the city of New Orleans were concerned, save that it denies any scheme of wrong, any intention of injuring complainant, or that it invades or destroys any of complainant's rights or privileges, but is advised and believes that the complainant has no exclusive rights or any rights that would be injured or destroyed by the active exercise of de-
111 fendant's rights in the premises or the carrying out of the provisions and objects in its charter contained.

In answer to paragraph twenty-three of complainant's bill of complaint defendant admits the allegation contained in it to the extent only that the council of the city of New Orleans in its municipal government held out that it had the right to grant to this defendant the right and privilege of setting up, constituting, and operating within said city a system of water works and water supply, and defendant denies knowing that said city council claimed said authority under the provisions of article two hundred and fifty-eight (258) of the Louisiana constitution of 1879 and does not know that there existed any warranty between the city of New Orleans and complainant or that any estoppel had grown up between them, as claimed by said complainant, and denies any collusion or intended collusion on the part of this defendant with said city, or any invasion or any intention of invasion of any exclusive rights of complain-
112 ants, but alleges that it is advised and verily believes that in such warranty nor estoppel nor exclusive rights existed, and that the city of New Orleans is and can in no manner be precluded or hindered from passing such an ordinance granting all of the aforementioned privileges to this defendant, but that it has full power to do so if said article two hundred and fifty-eight of the constitution of Louisiana had no existence.

Defendant does not know and is not informed whether the matters and things contained in paragraph — (24) of complainant's bill of complaint are true or not, and neither admits nor denies them, save that it denies any wrong on its part or connivance, combination, or collusion, as alleged, with the city of New Orleans, "under cover of a pretended repeal of the rights of complainant in the said constitution of 1879," but believes, at the rate of charges made by the complainant for supplying water, that two water-works sys-
113 tems could, with profit, exist in the city of New Orleans, and further says that it is advised and verily believes that no such exclusive rights are conferred upon complainant as alleged and claimed by said complainant in his said bill of complaint.

Defendant denies that it has committed wrongful acts, as alleged in 25th paragraph of complainant's bill of complaint, and says that it does not know and is not informed whether the other matters *and*

in said paragraph contained are true or not, and neither admits nor denies them.

Defendant denies that any "course" or "scheme of wrong" was enacted, contemplated, or intended by it, alone or in connection with the city of New Orleans, and says that it is advised and verily believes that the privileges granted it in its charter of incorporation, which it submits that it has the right to carry into effect, were legally and in good faith and conscience granted and obtained.

In answer to paragraph (27) twenty-seven of complainant's bill of complaint defendant is advised and verily believes that com-
114 plainant has no such exclusive rights as alleged; that defendant does not set up, assert, and rely alone upon any pretended amendment or provision of the constitution of the State of Louisiana, as alleged by said complainant in his said bill of complaint, for its incorporate rights, but the truth and fact is that its rights are derived from the general provisions of the statutes and constitution of the State of Louisiana authorizing the formation of incorporated bodies for public improvements and other purposes, and that they are founded and established upon the principles of police regulation and power.

Defendant denies any invasion or intention of invasion of any rights of complainant, as alleged in paragraph 28 of complainant's bill of complaint, and as to the other matters and things in said paragraph contained defendant does not know; neither does he admit nor deny the verity of the same, but says that it is advised and verily believes that they are not true, and submits the
115 same as questions of law to the judgment of the court.

Defendant, in answer to paragraph (29) twenty-nine of complainant's bill of complaint, denies any intention of committing any wrong or violating good conscience, and is advised and verily believes that neither its acts and doings, nor any of them, are contrary to equity and good conscience; that said matters and things are questions of law and submits the same to the judgment of the court.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith it is by the said bill charged, without this, that there is any other matter, cause, or thing in said complainant's said bill of complaint contained material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied is not true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and will-
116 ing to aver, maintain, and prove as this honorable court shall direct, and humbly prays that the *pendente lite* injunction granted the complainant on the 11th day of October, 1882, be dissolved and that this defendant be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained, and prays that all of its rights for damages sustained herein and in the premises be reserved.

(Signed) G. L. HALL,
T. M. GILL,
Solicitors.

D. B. Penn, being duly sworn, doth depose and say that [he] is vice-president and acting president of this defendant, named in the foregoing answer; that he has read the same and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters and things therein stated on information and belief, and as to those matters and things he verily believes them to be true.

(Signed) D. B. PENN, *V. P.*

117 Subscribed and sworn to before me this the third day of Jan'y, 1883.

(Signed) T. V. COUPLAND,
U. S. Commissioner.

Extract from Chancery Order-Book.

NEW ORLEANS WATER WORKS CO.
vs.
ST. TAMMANY WATER WORKS CO. } No. 10031.

JANUARY 3, 1883.

The St. Tammany Water Works Company, one of the defendants herein, by G. L. Hall and T. M. Gill, its solicitors, has this day filed its answer to the complainant's bill of complaint.

Order. Demurrer Overruled.

Extract from the Minutes of January 4th, 1883.

NEW ORLEANS WATER WORKS CO.
vs.
ST. TAMMANY WATER WORKS CO. & CITY OF N. O. } No. 10031.

This cause came on to be heard on the demurrer herein filed by the defendant, The City of New Orleans, and was argued by counsel for the complainant, whereupon, and upon consideration
118 whereof, it was ordered and decreed that the said demurrer of The City of New Orleans be, and the same hereby is, overruled, with leave to said defendant to file answer on or before the 20th January, 1883.

Replication to the Answer of the St. Tammany Water Works Company. Filed January 26th, 1883.

United States Circuit Court, Fifth Circuit, Eastern District of La.
In Equity.

THE NEW ORLEANS WATER WORKS CO., Complainant,
vs.
ST. TAMMANY WATER WORKS CO., Defendant. } No. 10031.

The replication of the New Orleans Water Works Company, complainant, to the answer of the St. Tammany Water Works Company, defendant.

This repliant, saving unto itself all and all manner of advantage

and exception to the manifold insufficiencies of said answer, for replication thereunto, saith that it will aver and prove its
119 said bill to be true, certain, and sufficient in law to be answered unto, and that each of the said several answers of the said defendants is uncertain, untrue, and insufficient to be replied unto by this repliant without this, that any other matter or thing whatsoever in the said answers, or either of them, contained material or effectual in law to be replied unto, confessed, avoided, traversed, or denied as true; all of which matters and things this repliant will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

(Signed) J. R. BECKWITH,
Sol. for Compl't.

(Signed) E. H. FARRAR,
Counsel for Compl't.

Extract from Chancery Order Book.

N. O. WATER WORKS CO.
vs.
ST. TAMMANY WATER WORKS CO. *et al.*

JANUARY 26, 1883.

The complainant herein, by J. R. Beckworth and E. H.
120 Farrar, its solicitors, have this day filed its replication to the answer of the St. Tammany Water Works Company, filed herein.

Answer of The City of New Orleans. Filed January 29th, 1883.

U. S. Circuit Court, 5th Circuit & Eastern Dist. of La. In Equity.

NEW ORLEANS WATER WORKS CO., Complainant,
vs.
THE ST. TAMMANY WATER WORKS CO., *et al.* } No. 10031.

The separate answer of the city of New Orleans, one of the defendants, to the bill of complaint herein.

To the honorable the judges thereof:

This defendant, now and at all times hereafter reserving all manner of benefit and advantage to herself of exception to the many errors and insufficiencies in said bill contained (and especially reserving her rights under the demurrer hereinbefore filed), for answer thereto, or to so much thereof as this defendant is advised is material for her to make answer unto, says:

121 . That it admits the passage, existence, and execution of the acts of the Legislature and contracts and ordinances of and with the city of New Orleans, as alleged in complainant's bill, and not deeming it necessary or material to make special and categorical answer to all the matters of fact and conclusions of law in complainant's bill of complaint set forth, except as hereinafter done, for

answer generally avers and says that as to pretended obligation of warranty of the city of New Orleans, the same is confined and limited to the title of the property, works, and machinery, etc., conveyed by the city of New Orleans as an ordinary vendor, and does not embrace any guarantee of exclusive privilege, as in complainant's bill of complaint set forth.

That this defendant is and was at the time of said sale a municipal corporation deriving all its powers and authority from the State, through her Legislature, and had not the right to grant, and did not grant, unto complainant the exclusive privilege to
122 supply water to the city of New Orleans and her inhabitants, and had no transactions legislative through her municipal government, or by contract with complainant herein, *or* reference to the matters set up, except the contract of April 9th, 1878, whereby she sold as aforesaid, appearing not — her judicial or legislative capacity, but as a private, contracting person selling certain specific property under authority of the act of the Legislature, and in so far as complainant has or claims to have the exclusive privilege by her *ought* to be protected herein the same is based and derived wholly from the sovereign direct, to wit, the act of the Legislature of La., being act No. 33, acts of 1877, extra session, and this respondent, neither admitting nor denying the allegations of fact and law as to whether said act No. 33 of 1877, followed by the execution of the contract with this respondent of the contract of sale of April 9th, 1878, conferred an exclusive privilege, and, if so, whether such exclusive privilege has been revoked and annulled, or whether,
123 having been granted, it constitutes a vested contract right shielded from improvement by the Constitution of the United States, submits said questions in so far as the same legally and properly are presented by the said bill of complaint and the pleadings herein for adjudication to the decision of this hon. court.

And specially answering to the matters set forth in paragraph 23 of complainant's bill of complaint this defendant denies that through the council or legal representatives she has ever expressed an interpretation of the rights of complainants, either favoring or denying the pretended exclusive privilege, and at no time has she passed or proposed to pass any ordinance or ordinances or take any official action in the premises, either for or against the existence of said alleged exclusive privilege, and if any of the members of the council held or expressed an opinion or intention in that regard this defendant is not precluded or affected thereby and such acts cannot
124 be held to be acts of the corporate authority, and this defendant specially denies any and all allegations in said paragraph 23 or any other part of said complainant's bill tending to charge collusion or intention to collude with the St. Tammany Water Works Company, codefendant herein, for the purpose of injuring the complainant in any manner, and that there is any other matter, cause, or anything in said complainant's bill set forth material or necessary for this defendant to answer unto not fully answered, confessed, traversed, or avoided or denied is not true, to the knowledge or belief of this defendant; all of which matters and things this

defendant is ready and willing to aver, maintain, and prove as this honorable court will direct, and humbly prays that the injunction issued herein, *pendente lite*, be dissolved, and that this defendant be hence dismissed, with his reasonable costs in this behalf sustained.

(Signed) C. F. BUCK,
City Att'y, Solicitor.

125 W. J. Behan, duly sworn, deposes and says that he is mayor of the city of New Orleans, one of the defendants herein; that he has read the foregoing answer, and the facts therein stated are true to the best of his knowledge & belief from information received.

(Signed) W. J. BEHAN, *Mayor.*

Sworn to & subscribed before me this January 29, '83.

[SEAL.] (Signed) W. O. HART,
Not. Pub.

Extract from Chancery Order-Book.

NEW ORLEANS WATER WORKS CO.
vs.
THE ST. TAMMANY WATER WORKS CO. *et al.*

JAN'Y 29TH, 1883.

The City of New Orleans, one of the defendants herein, by C. F. Buck, city *of* att'y, its solicitor, has this day filed its separate answer to the complainant's bill of complaint:

Replication to the Answer of The City of New Orleans. Filed January 30th, 1883.

126 N. O. WATER WORKS CO. *vs.* ST. TAMMANY W. W. CO. *et als.* } In Chancery. No. 10031.

The replication of The New Orleans Water Works Co., complainant, to the answer of The City of New Orleans, defendant.

Before the honorable the judges of the United States circuit court for the fifth judicial circuit, eastern district of Louisiana.

This repliant, saving & and reserving to himself now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto says that he will aver, maintain, and prove his bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repriant without this, that any other matter or thing whatsoever in the said answer contained material
127 or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things

this repliant is and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by his said bill he has already prayed.

(Signed) E. H. FARRAR,
Solicitor for Complainant.

(Signed) J. R. BECKWITH, *Counsel.*

Extract from Chancery Order-Book.

N. O. WATER WORKS CO.
vs.
ST. TAMMANY WATER WORKS COMPANY *et als.* } No. 10031.

JANUARY 30TH, 1883.

The complainant herein, by E. H. Farrar and J. R. Beckwith, its solicitors, has this day filed its replication to the answer of The City of New Orleans filed herein.

Motion and Order Appointing F. A. Woolfley Examiner. Entered & Filed January 31st, 1883.

128 U. S. Circuit Court, E. Dist. of La.

NEW ORLEANS WATER WORKS CO.
vs.
ST. TAMMANY W. W. CO. *et als.*

On motion of J. R. Beckwith and E. H. Farrar, sol'rs for the complainant, and on suggesting to the court that this cause is at issue on the answers of the defendants—

It is ordered by the court that F. A. Woolfley, Esq., U. S. com., be appointed examiner to take the oral testimony and register the documentary evidence adduced by the complainant.

Document 1. *Filed February 17th,* 1883.

STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans:

Be it known that on this nineteenth day of January, in the year of our Lord one thousand eight hundred and sixty-nine, and the ninety-third of the Independence of the United States of America, before me, Andrew Hero, Jr., a notary public in and for the parish of Orleans, duly commissioned and qualified, and in the presence
129 of the witnesses hereinafter named and undersigned, personally came and appeared the Honorable John R. Conway, mayor of the city of New Orleans, and herein acting in such capacity of mayor, under and by virtue of resolution number 1232, new series, passed by the honorable the common council of New Orleans, approved January the sixteenth, 1869, a certified copy of which is hereto annexed for reference, and the same is in the words and figures following, to wit:

Resolved, That, in order to complete the purchase and delivery of the water works purchased from the Commercial Bank of New

Orleans, the mayor be, and is hereby, authorized to sign a notarial act acknowledging delivery of the same and the movable and immovable property included in said purchase, and on the signing of such act by the president of the Commercial Bank, duly authorized, the mayor be, and is hereby, authorized to give his obligation to deliver to said president of the Commercial Bank, within sixty days from the signing of such act, bonds of the city of New
130 Orleans to the amount of thirteen hundred and ninety-three thousand and four hundred dollars, having thirty years to run, and bearing interest at the rate of five per centum per annum from the first day of January, 1869, payable semi-annually, on the first day of January and the first day of July in each and every year, provided the same meet with the approval of the city attorney.

And also came and appeared Felix Labatut, president of the Commercial Bank of New Orleans, a duly incorporated institution of this State, and herein acting in such capacity of president under and by virtue of a resolution passed at a meeting of the board of directors of said bank, held on the thirteenth day of January, instant, a duly certified copy of which said resolution is hereto annexed for reference.

Which said parties declared that, whereas, by an act of the Legislature of this State, incorporating the said Commercial Bank and granting it the privilege of conveying water from the Missis-
131 sippi river into the city of New Orleans and its faubourgs and into the houses of its inhabitants, entitled "An act to incorporate the Commercial Bank of New Orleans," approved April 1, 1883, it was provided by the 4th and 42d sections thereof that at any time after the expiration of thirty-five years from the passage of said act it shall be lawful for the corporation of the city of New Orleans to purchase from said Commercial Bank of New Orleans the water works to be constructed by said company by virtue of said act at a price to be fixed by arbitrators, of whom five shall be chosen by the president and directors of said Commercial Bank of New Orleans and five by the city council of New Orleans, and none of whom are to be stockholders in said company nor members of the city council of New Orleans, and that the award of said arbitrators, in writing, in case of their agreement, should be binding on the respective parties, and that the amount so decided upon should be payable
132 in bonds of the mayor, aldermen, and inhabitants of New Orleans, bearing an interest of five per centum per annum, payable semi-annually, and redeemable in not less than ten nor more than thirty years from the day on which said award should be signed and the said water works delivered over to the said corporation of New Orleans.

And whereas the city of New Orleans has deemed it expedient to purchase the said water works, as provided for in sections 4 and 42 of the aforesaid act, and has signified its intention so to do, under and by virtue of resolution No. 889, new series, passed by the honorable the common council of New Orleans, and approved March 27th, 1868, a certified copy of which said resolution is hereto annexed, and it is in the words and figures following, viz:

No. 889—New Series.

Whereas, by an act of the Legislature of the State of Louisiana to incorporate the Commercial Bank of New Orleans, ap-
133 proved April 1, 1833, establishing a company in the city of New Orleans invested with banking privileges, and to be entitled the "Commercial Bank of New Orleans," the chief object of which said company is to be the conveying of water from the river into the city of New Orleans and its faubourgs and into the houses of its inhabitants;

Whereas the first section provides the original stock shall be three millions of dollars;

Whereas the fourth section provides that at any time after the expiration of thirty-five years from the passage of this act it shall be lawful for the corporation of the city of New Orleans to purchase from the Commercial Bank of New Orleans the water works constructed by said company in virtue of this act, and said company shall not refuse to sell the works aforesaid, with all the rights and privileges appertaining to the same, on the terms hereinafter provided;

Whereas the thirty-eighth section provides that the corporation of New Orleans shall be supplied by said company, free of
134 charge, with all water necessary for the extinguishment of fires and other public purposes, as they progress in laying aqueducts they shall place, free of any charge whatever, two hydrants of proper construction in front of each square, and the said company shall supply a sufficient quantity of clear, pure, and wholesome water for the use of its inhabitants at the elevation of fifteen feet when the same may be required;

Whereas the forty-second section provides that if after the expiration of thirty-five years the said corporation of New Orleans shall be inclined to buy the said water works from the Commercial Bank of New Orleans, the price shall be fixed by arbitrators, five of whom shall be chosen by the president and directors of the Commercial Bank of New Orleans and five by the city council of New Orleans; said arbitrators shall take into consideration the value of the water works and grounds appertaining thereto, and the amount so
135 agreed upon shall be payable in bonds bearing five per cent. interest, redeemable in not less than ten nor more than thirty years: Therefore, be it—

Resolved, That the city of New Orleans will purchase the Commercial Water Works upon the terms and conditions as provided for in act of the Legislature of the State of Louisiana to incorporate the Commercial Bank of New Orleans, approved April 1, 1883.

(Signed) WM. T. HEPP,
President Board of Assistant Aldermen.

(Signed) JAMES GRAHAM,
President Board of Aldermen.

Approved March 27, 1868.

(Signed) E. HEATH, *Mayor.*

A true copy. D. D. WHITAKER,
Secretary.

And whereas, agreeably to the provision of said section 42 of the aforesaid act of the Legislature incorporating said Commercial Bank of New Orleans, the common council of New Orleans, at a joint session thereof held on the 7th April, 1868, elected Messrs. Josiah B. Richardson, Edward Filleul, John M. G. Parker, William H. Bell, and Daniel Blair, all of this city, as the five arbitrators on the
136 part of the city, and at a subsequent joint session of said council, held on the 5th day of May, 1868, John Lockwood, of this city, was elected as one of the five abitrators on the part of the city in the place of Daniel Blair, previously elected, but who had resigned the position of such arbitrator, as will appear by reference to the annexed extract from the minutes of said common council; and the president and directors of said Commercial Bank, agreeably to said section No. 42, at a meeting thereof held on the 2d day of May, 1868, elected Messrs. William C. C. Claiborne, John Communy, Frank H. Hatch, James Freret, and Joseph Hernandez, all of this city, as the five arbitrators on the part of the said Commercial Bank of New Orleans, as will appear by reference to the annexed extract from the minutes of the proceedings of the said meeting.

And whereas the said ten arbitrators, after having taken into consideration the value of the said water works and grounds ap-
137 pertaining thereto for supplying the city and *and* faubourgs of New Orleans with water by the said company, agreed and fixed the price at which said water works and all its appurtenances (with the exception of the buildings and lot of ground situated on Dryades street) should be sold to the city of New Orleans for the sum of two millions of dollars, payable in bonds of the city of New Orleans, as provided for by the 42d section of the charter of said bank, which said report is in the words and figures following, to wit:

To the honorable mayor and common council of New Orleans:

We, the undersigned, having been appointed by the city of New Orleans and the Commercial Water Works Company arbitrators for the purpose of fixing the price for which said water works and its appurtenances are to be sold to said city of New Orleans, five of us having been appointed by the common council of said city, namely:
J. M. G. Parker, Josiah B. Richardson, John Lockwood, Edward Filleul, and William H. Bell, and five by the said Commercial
138 Water Works Company, namely, W. C. C. Claiborne, John Communy, Frank H. Hatch, James Freret, and Joseph Hernandez, after having met several times and examined thoroughly the property of said company and taken into consideration the value of the water works and grounds appertaining thereto for supplying the city and faubourgs of New Orleans with water by said company, hereby fix the price of said water works, in pursuance to the 42d section of the charter of said corporation, at the sum of two millions of dollars, for which price the water works and all its appurtenances (with the exception of the buildings and lot of ground situated on Dryades street) are to be sold by the said corporation to the city of

New Orleans, the said sum payable in bonds of the city of New Orleans, as provided by the 42d section of the charter of said bank.

New Orleans, July 22, 1868.

JOHN LOCKWOOD.
JOSIAH B. RICHARDSON.
J. HERNANDEZ.
W. H. BELL.
139 JN. COMMUNY.
W. C. C. CLAIBORNE.
F. H. HATCH.
E. FILLEUL.
JOHN M. G. PARKER.
JAS. FRERET.

All relative to which will more fully appear by reference to the annexed certified extract from the proceedings of the board of assistant aldermen of the common council of the city of New Orleans, at a meeting thereof held on the 28th day of July, 1868.

And whereas the city of New Orleans is a stockholder in the capital stock of the said Commercial Bank of New Orleans for five thousand shares of one hundred dollars each, by reason of which the said city is entitled to a credit of five hundred thousand dollars of the aforesaid sum of two millions of dollars agreed upon by the said arbitrators as the price which the said city of New Orleans should pay for said water works and appurtenances; said city is also entitled to a further credit on said price of the sum of one hundred and six thousand six hundred dollars, the same arising from its interest as such stockholder in and to the cash pertaining to the sink-
140 ing fund created under the provisions of the 23d section of the charter of said Commercial Bank, and which said sums of five hundred thousand dollars and one hundred and six thousand six hundred dollars, making the total sum of six hundred and six thousand six hundred dollars, being deducted from the said price and sum of two millions of dollars, makes the amount which said city of New Orleans is to pay for the aforesaid water works, with the appurtenances and grounds appertaining thereto, the sum of one million three hundred and ninety-three thousand and four hundred dollars, payable in bonds, which the said city is authorized to execute and deliver, under the provisions of an act of the General Assembly of this State entitled "An act to amend an act entitled 'An act to incorporate the Commercial Bank of New Orleans, approved April 1, 1883,' approved July 22, 1868:"

Now, therefore, in consideration of the premises, and in order to give unto the city of New Orleans an authentic title to the
141 said water works and all appurtenances thereto pertaining, the said Felix Labatut moreover declared, in his said capacity, that by virtue of the authority in him vested by the aforesaid resolution of the board of directors of said Commercial Bank of New Orleans, and for the consideration and on the terms and conditions hereinafter expressed, he does, by these presents, cede, grant, bargain, sell, transfer, assign, set over, and deliver unto the city of New Orleans,

herein represented by the said Honorable John R. Conway, mayor thereof, who accepts the same for the said city and its assigns, and acknowledges delivery and possession thereof:

All and singular the property, real and personal, of whatever nature or kind soever, belonging to the water works constructed and established by the said Commercial Bank of New Orleans, and the dykes, mounds, reservoirs, machinery, engines, boilers, pumps, conduits, aqueducts, pipes, tools, and other appurtenances appertaining thereto.

And the real estate aforesaid is described as follows, to wit:

1st. A certain square of ground, together with the reser-
142 voirs, buildings, and all other improvements thereon, and the rights, servitude, ways, privileges, and appurtenances thereunto belonging or in anywise appertaining, situated in the Faubourg Annunciation, first district of this city, designated by the number eighteen on a plan of said faubourg drawn by B. Lafon, surveyor, dated the fifteenth day of May, one thousand eight hundred and seven, which said square is bounded by Religious, St. Thomas (formerly St. John the Baptist), Richard, and Market streets, and it has a front on each of the said streets of three hundred feet. Said square of ground was acquired by the said Commercial Bank of New Orleans by purchase and as the last and highest bidder thereon at a public sale thereof made by George Washington Morgan, sheriff of the parish of Orleans aforesaid, on the fifth day of May, one thousand eight hundred and thirty-four, under and by virtue of an order of seizure and sale to him directed by the honorable the parish court of the parish of Orleans at the suit of Didier Dreux *vs.* John
Green, number 7277 of the docket of the said court, as
143 per the deed of said sale in the premises hereunto annexed made by the said sheriff and bearing dated the nineteenth day of May, A. D. eighteen hundred and thirty-four. And by an act passed before Hilary B. Cenas, late a notary in this city, on the nineteenth day of May, eighteen hundred and thirty-four, John D. Bein, James Peuch, John Armstrong, William E. Leverich, Alexander McKeever, Isaac L. McKay, and Sarah Matilda Beck, parties to said act and joint proprietors of said square of ground at the time of the public sale thereof made as a aforesaid, did, severally and each for the proportion of the said square of ground claimed by him or her therein, ratify and confirm the said sheriff's sale and hold the same binding on them in the same manner and to the same extent as if it had been their own proper act and will, all in relation to which will more fully appear in the said act, to which reference is hereby made.

2d. A certain piece or portion of ground, together with all the
buildings and improvements thereon, and the machinery,
144 boilers, engines, cisterns, rights, privileges, servitudes, ways, and appurtenances thereunto belonging or in anywise appertaining, situated in the suburb Lacourse, first district of this city, in the square bounded by New Levee, Tchoupitoulas, Richard and Orange streets, and measuring one hundred and ninety-one feet nine inches and six lines front on New Levee street, one hundred and

ninety-one feet nine inches and four lines front on Tchoupitoulas street, three hundred and eighty-three feet seven inches and three lines front on Richard street, and three hundred and eighty-three feet seven inches and three lines on a straight line running from the terminaiton of the line on New Levee street aforesaid to the termination of the line on Tchoupitoulas street aforesaid parallel to Orange street, and dividing the said piece or portion of ground from the properties now or formerly belonging to A. Caldwell and to R. Toledano, which form the remainder of said square.

Said piece or portion of ground was, prior to its acquisition
145 by the said Commercial Bank of New Orleans, divided into twenty lots, and they were acquired by said Commercial Bank as follows, to wit: Eight thereof, designated by the numbers 1, 2, 3, 4, 5, 18, 19, and 20 on a plan thereof drawn by Charles F. Zimpel, surveyor, and deposited in the office of G. R. Stringer, late a notary in this city, as plan No. 4, and measuring together one hundred and ninety-one feet nine inches and four lines front on Tchoupitoulas street and one hundred and eighty-four feet four inches and seven lines front on Richard street, forming the corner of Tchoupitoulas and Richard streets in said square, by purchase, and as the last and highest bidder thereon at a public sale thereof made by George W. Morgan, sheriff of this parish, on the sixteenth day of June, A. D. eighteen hund[red] and thirty-four, by virtue of an order of execution to him directed by the district court of the first judicial district of the state of Louisiana in a suit of partition entitled "John Green and J. W. Justamond *vs.* Widow Maguire, in her own name and as tutrix of her minor child," No. 11213
146 of the docket of said court, as per the said sheriff's deed of sale, dated the 10th day of July, 1834; also, seven thereof designated by the numbers 1, 2, 3, 4, 5, 6, and 7 on a plan drawn by said Surveyor Zimple, dated 27th of April, 1832, and deposited in the office of said late notary, H. B. Cenas, which said seven lots measure together seventy-one feet nine inches and six lines front on New Levee street and one hundred and ninety-nine feet two inches and four lines front on Richard street, forming the corner of New Levee and Richard streets in said square, by purchase from Levi Pierce, as per the act of sale passed before the said late notary, H. B. Cenas, on the 13th day of April, 1835; also, two thereof, designated by the numbers 9 and 10 on a plan drawn by said Surveyor Zimpel, deposited in the office of said notary, G. R. Stringer, and measuring together forty-eight feet front on New Levee street, by purchase from Pascal M. Tourne and Nicholas Beckwith, as per the act of sale thereof, passed before the said late notary, H. B.
147 Cenas, on the 3d day of April, 1835; lastly, the three remaining of said lots, designated by the numbers 6, 7, and 8 on a plan drawn by Surveyor Zimpel in the year 1832 and deposited in the office of said notary, G. R. Stringer, measuring together seventy-two feet front on New Levee street, by purchase from Alexander Grailhe, as per the act of sale thereof, passed before the said late notary, H. B. Cenas, on the 14th day of February, 1839. And by an act of compromise entered into between the said Alexander

Grailhe and the said Commercial Bank of New Orleans, and passed before the said notary, H. B. Cenas, on the 13th day of December, 1844, certain matters of dispute between the said parties growing out of said sale were settled to their mutual satisfaction.

And the personal property herein transferred having been delivered to the commissioners of the water works of said City of New Orleans, and they being satisfied with the quantity and nature
148 of the articles so delivered, the said Mayor Conway hereby dispenses with a particular and exact inventory thereof for annexation hereto, as is otherwise required by law.

By reference to the annexed certificates of the register of conveyances and the recorder of mortgages in and for this city and parish, dated this day, it will be seen, first, that the real estate and appurtenances herein described have not been alienated by said Commercial Bank of New Orleans prior to the date hereof, and stand registered in its name; and, second, that the said property is free from encumbrances in the name of said bank, with the exception of the privilege of drainage, and also the general mortgage in favor of the City of New Orleans for the sum of two thousand three hundred and ninety-two dollars, with interest, costs, &c., resulting from a judgment rendered by the honorable the second district court of New Orleans on the thirteenth day of March, eighteen hundred and fifty-eight, against the Commercial Water Works for taxes of
149 eighteen hundred and fifty-six: To have and to hold the said property and appurtenances unto the City of New Orleans and its assigns forever.

And the said Labatut, in his said capacity, moreover, transfers unto the City of New Orleans all the rights and actions of warranty to which the said Commercial Bank of New Orleans is or may be entitled against all the former proprietors of the property herein conveyed, subrogating the said City of New Orleans to the said rights and actions to be by it enjoyed and exercised in the same manner as they might have been by said Commercial Bank of New Orleans.

This sale and transfer is made and accepted in conformity with the above award of said arbitrators and agreeably to the aforesaid deduction agreed upon by and between the board of directors of said Commercial Bank of New Orleans and the city of New Orleans, for and in consideration of the price and sum of one million three
150 hundred and ninety-three thousand four hundred dollars and interest, as hereinafter expressed; in settlement of which the said Mayor Conway hereby promises for and binds and obligates the City of New Orleans to deliver, or cause to be delivered, within sixty days from and after the date of these presents, unto the president of said Commercial Bank of the city of New Orleans bonds of the city of New Orleans signed by the mayor, comptroller, and treasurer thereof, amounting in the aggregate to the said sum of one million three hundred and ninety-three thousand four hundred dollars, and of such amounts as may be agreed upon, payable on the first day of January, A. D. eighteen hundred and ninety-nine, at the office of the city treasurer, and bear-

ing interest at the rate of five per cent. per annum from and after the first day of January, A. D. eighteen hundred and sixty-nine, payable semi-annually on the first day of January and July of each and every year during the period aforesaid at the office of said city treasurer, and for which interest the requisite number
151 of coupons will be attached to each bond.

The afore-described real estate is exempted by law from the payment of all State and city taxes, and receipts have been produced and exhibited to me, notary, showing that eight several instalments for drainage have been paid on said property.

And, finally, it is understood and agreed to that the buildings and lot of ground situated on Dryades street and specified in the aforesaid report of the said arbitrators as being excluded from this sale and transfer is more fully and particularly defined and described as a certain lot of ground, together with all the buildings and improvements thereon and all rights and privileges thereto belonging, situate in the first district of this city, in the square bounded by Dryades, Canal, Rampart, and Common streets, and measuring in English measure fifty-two feet front on Dryades street and forty-five feet in width in the rear by one hundred and five feet
152 six inches in depth, being the same property which the said Commercial Bank of New Orleans acquired by purchase from Mrs. Marian Jackson by an act passed before said late notary Hilary B. Cenas on the second day of March, one thousand eight hundred and fifty-seven.

Thus done and passed in my office, at New Orleans aforesaid, in the presence of Messrs. James Graham and George Cenas, witnesses of lawful age, domiciliated in this city, who hereunto sign their names with the parties and me, the said notary, on the day and year set forth in the caption hereof, after due reading of the foregoing.

(Original signed:)

FELIX LABATUT, *President.*
JOHN R. CONWAY, *Mayor.*

Approved:
HENRY I. LEOVY,
City Att'y.
ANDREW HERO, JR.,
Not. Pub.

A true copy of the original act (duly stamped) on file and of record in my office.

New Orleans, 20th March, 1869.

[5 cents int. rev. stamp affixed.]

[SEAL.] (Signed) ANDREW HERO, JR.,
Not. Pub.

153 *Document* 3. *Filed February 17th*, 1883.

1st April, 1879.

Mortgage. New Orleans Water Works Co. to Adolphe Schreiber.

United States of America.

State of Louisiana, *City of New Orleans:*

Be it known that on this first day of April, eighteen hundred and seventy-nine, before me, James Fahey, a notary public in and for this city and the parish of Orleans, State of Louisiana, aforesaid, duly commissioned and qualified, and in presence of the witnesses hereinafter named and undersigned, personally came and appeared Messieurs Edward Toby and Alexander Bonneval, both of this city and respectively the president and secretary of and herein acting for the New Orleans Water Works Company, who declared that
154 whereas the said New Orleans Water Works Company has been duly incorporated under and by virtue of act No. thirty-three of the Legislature of this State, passed during the extra session of 1877, approved 31st March, 1877, entitled An act to enable the city of New Orleans to promote the public health, and to afford greater security against fire by the establishment of a corporation to be called the New Orleans Water Works Company; to authorize the said company to issue bonds for the purpose of extending and improving the said works, and to furnish the inhabitants of New Orleans an adequate supply of pure and wholesome water; to permit the holders of water-works bonds to convert them into stock, and to provide for the liquidation of the bonded and floating debt of the city of New Orleans, and of act No. forty-three, amendatory thereto, passed during the regular session of 1878 and approved on the 26th of February, 1878, entitled An act relative to the charter of the New Orleans Water Works Company, and amending
155 act No. thirty-three of extra session of 1877, approved March 31st, 1877.

And whereas section No. nine of said act No. thirty-three provides that the board of directors of said New Orleans Water Works Company shall have power to borrow money for the purpose of improving and enlarging its works and increasing the supply of pure water, and in order to accomplish the said purpose the board of directors of said company was by said act authorized to issue the bonds of said company to an amount not exceeding two million dollars, in such sums, on such terms, and bearing such rate of interest as said board may determine, and the payment of said bonds, in principal and interest, may be secured by a mortgage of all the property and franchises of said company, including its franchises to be a corporation, and said mortgage may include the property and franchises of said company, acquired, or to be acquired, and the registration of said mortgage in the office of the recorder of mortgages for
156 the parish of Orleans shall operate on the property & franchises of said company wheresoever situated, and shall be and continue a valid and subsisting mortgage until the payment of

said debt secured by it without reinscription: Provided, however, That no bond shall be issued or mortgage given without the consent of the council of the city of New Orleans; and said bonds shall not be sold or disposed of except on such terms as shall be approved by said council of said city; and

Whereas, in pursuance of said act, the council of the city of New Orleans, by ordinance No. 4628, adopted at its meeting of the 7th August, 1878, consented to the issuance of said bonds of said company, bearing mortgage, provided that said bonds of said company shall not bear more than six per cent. per annum interest, and shall not be sold or disposed of at less than their par value, a true copy of which ordinance is hereto annexed as part hereof, and is in the words and figures following, to wit:

157 MAYORALTY OF NEW ORLEANS,
CITY HALL, *August 8th*, 1878.

No. 4628. Administration series.

Whereas section 9 of act No. 33 of the extra session of 1877 provides that the board of directors of said company shall have power, in addition to the authority to increase its capital stock, to borrow money for the purpose of improving and enlarging its works and increasing the supply of pure water, and to accomplish this purpose said board of directors are hereby authorized to issue the bonds of the company to an amount not exceeding two million dollars, in such sums, on such terms, and bearing such rate of interest as said board may determine; and the payment of said bonds, in principal and interest, may be secured by a mortgage of all the property and franchises of said company, including its franchise to be a corporation; and said mortgage may include the property and franchises of said company, acquired or to be acquired, *in* the registration
158 of said mortgage in the office of the recorder of mortgages for the parish of Orleans shall operate on the property and franchises of said company wheresoever situated, and shall be and continue a valid and subsisting mortgage until the payment of the debt secured by it without reinscription: Provided, however, That no bond shall be issued or mortgage given without the consent of the council of the city of New Orleans, and said bonds shall not be sold or disposed of, except on such terms as shall be approved by said city council of said city; and whereas the board of directors of the New Orleans Water Works Company has passed a resolution at the meeting held on the 22d July, 1878, at the office of the company, No. 47 Camp street, to issue five hundred thousand dollars of bonds of said company, bearing six per cent. — per annum, payable not less than twenty-five years after date, and the payment of which capital and interest is secured by a mortgage covering all the property
159 and franchises of said company, acquired or to be acquired, including its franchise to be a corporation, for the purpose of improving and enlarging its works and increasing the supply of pure water:

Be it resolved, That the council of the city of New Orleans hereby

approves and gives its consent to the issuance of said bonds bearing mortgage, as above stipulated: Provided, That the said bonds shall not bear more than six per cent. interest per annum and shall not be sold or disposed of at less than their par value.

Adopted by the council of the city of New Orleans, August 7th, 1878.

Yeas: Cavanac, Denis, Diamond, McCaffrey.

ED. PILSBURY, *Mayor.*

THOS. G. RAPIER, *Secretary.*

I hereby certify that the above ordinance is a true copy of ordinance No. 4628 A.-S., adopted by the city council of New Orleans on the 7th day of August, 1878, and that the same has been duly promulgated in the official journal.

R. C. MORGAN,
Ass't Sec't'y Council.

160 And whereas the said Edward Toby and said Alexander Bonneval, in their said capacity of president and secretary of said New Orleans Water Works Company, were authorized to borrow a sum of five hundred thousand ($500,000) dollars for the purposes in said acts contained and set forth, and on the terms therein stipulated, under and by virtue of a resolution of the board of directors of said company adopted at their meeting held on the 29th January, 1879, which resolution is amendatory of another resolution adopted by said board of directors on the 22d July, 1878, true copies whereof are hereto annexed as part hereof, and which said resolutions are in the words and figures following, to wit:

Special Meeting of the Board of Directors of the New Orleans Water Works Company.

NEW ORLEANS, *January 29th*, 1879.

The board met this day pursuant to adjournment of the special meeting held January 27, 1879.

Present: Messrs. E. Toby, pres't; Hon. J. W. Patton,
161 mayor; Hon. A. H. Isaacson, ad'r of finance; Hon. E. R. Chevalley, ad'r of water works and public buildings; Paul Fourchy, P. Sala, and W. Washburn.

On motion of Mr. Paul Fourchy, duly seconded, the report, plans, specifications, and estimates of Mr. Moses Lane, civil engineer, were unanimously adopted.

The president submitted to the board the form of the act of mortgage, which, by resolution passed at the meeting of the board held July 22d, 1878, he was authorized to have executed, covering all the property and franchises of this company, acquired or to be acquired, including its franchises to be a corporation, for the purpose of borrowing six hundred thousand dollars and issuing bonds bearing six per cent. interest per annum and payable thirty years after date.

On motion of Mr. P. Fourchy, duly seconded, the amount of the bonds to be secured by mortgage is reduced from six hundred thou-

sand dollars to five hundred thousand dollars, and with this
162 modification the form of the mortgage was unanimously adopted, to be executed as prescribed by said resolution of July 22d, 1878.

I hereby certify that the above is a true and correct transcript from the minutes of the company.

ALEX. BONNEVAL, *Secretary.*

Special Meeting of the Board of Directors of the New Orleans Water Works Company.

NEW ORLEANS, *July 22d*, 1878.

The board met this day, pursuant to the call of the president, at the office of the company, No. 47 Camp street.

Present: Messrs. E. Toby, pres't; P. Fourchy, James D. Edwards, ad'r of water works and public buildings; W. W. Washburn, and P. Sala.

Absent: His Honor Ed. Pilsbury, mayor, and J. C. Denis, ad'r of finance.

The minutes of the last meeting were read and approved.

On motion, duly seconded, the following resolution was unanimously adopted:

Whereas section 9 of the act No. 33 of the extra session of
163 1877 provides that the board of directors of said company shall have power, in addition to the authority to increase its capital stock, to borrow money for the purpose of improving and enlarging its works and increasing the supply of pure water; and to accomplish this purpose the board of directors are hereby authorized to issue the bonds of the company to the amount not exceeding two millions of dollars in such sums, on such terms, and bearing such rate of interest as said board may determine, and the payment of said bonds, in principal and interest, may be secured by mortgage of all the property and franchises of said company, including its franchise to be a corporation, and said mortgage may include the property and franchises of said company acquired or to be acquired, and the registration of said mortgage in the office of the recorder of mortgages for the parish of Orleans shall operate on the property and franchises of said company wheresoever situated, and shall be and continue a valid and subsisting mortgage
164 until the payment of the debt secured by it without reinscription: Provided, however, That no*t* bond shall be issued or mortgage given without the consent of the council of the city of New Orleans, and said bonds shall not be sold or disposed of, except on such terms as shall be approved by said council of said city.

Therefore the president of the company is hereby authorized to have an act of mortgage executed covering all the property and franchises of said company, acquired or to be acquired, including its franchise to be a corporation, for the purpose of borrowing six hundred thousand dollars, and issuing bonds bearing six per cent. interest per annum, payable in thirty years after date, and the pay-

ment of said bonds, in principal and interest, shall be secured by said mortgage, said bonds to be sold or disposed of at not less than par, and proceeds used exclusively for improving and enlarging the works of this company, within the five years limited by the
165 charter, said act of mortgage and bonds to be signed by the president and secretary of the company in favor of Adolphe Schreiber, Esquire, or bearer.

And the president is hereby authorized to apply to the council of the city of New Orleans to obtain the approval and consent of said council, as provided for in said section nine of said act No. thirty-three of the extra session of 1877.

I hereby certify that the above is a true copy of the minutes of the company.

ALEX. BONNEVAL,
Secretary.

Now, therefore, the said Edward Toby, president, and Alexander Bonneval, secretary, in their said several capacities, and in behalf of said New Orleans Water Works Company, do hereby declare and acknowledge that the said New Orleans Water Works Company is justly and truly indebted unto the said Adolphe Schreiber, Esquire, of the city of New Orleans, in the full and true sum of five hundred thousand dollars, lawful money of the United States of America, unto the said New Orleans Water Works Company by said
166 Adolphe Schreiber loaned and advanced for the purposes set forth in said act and resolutions, and for the reimbursement whereof the said Edward Toby, president, has made and subscribed for and in the name of said New Orleans Water Works Company one thousand bonds of five hundred dollars each, dated the first day of April, eighteen hundred and seventy-nine, payable thirty years after date to the said Adolphe Schreiber, or bearer, at the office of the said New Orleans Water Works Company, in this city, with interest thereon at the rate of six per cent. per annum from date till paid, which interest is represented by sixty coupons of fifteen dollars each, numbered from one to sixty, attached to each of said bonds, each coupon being payable semi-annually to the bearer thereof at the office of said New Orleans Water Works Company on the first days of April and October of each year, which said bonds have been countersigned by said Alexander Bon-
167 neval, secretary, and the impress of the seal of said New Orleans Water Works affixed thereto by him, and, after having been by me, notary, duly paraphed in order to indentify the same herewith, have been delivered unto the said Adolphe Schrieber, hereto present, acknowledging the receipt thereof, and accepting these presents for himself and such person or persons who may eventually become the holder or holders of said bonds.

Now, in order to secure the full and final payment of said bonds and coupons, the said Edward Toby, president, and Alexander Bonneval, secretary, in their said several capacities and by virtue of the aforesaid authorization unto them conferred, do by these presents, for and in the name and in behalf of said New Orleans Water Works

Company, specially mortgage, affect, and hypothecate unto and in favor of said Adolphe Schreiber and assigns, and such person or persons who may hereafter become the holder or holders of the aforedescribed bonds and coupons, the following-described prop-
168 erty, real, personal and mixed, rights, franchises, and appurtenances, to wit:

All and singular the property, real and personal, of whatever nature or kind soever, belonging to the water works constructed and established by the Commercial Bank of New Orleans, and subsequently by the city of New Orleans, and the dykes, mounds, reservoirs, machinery, and apparatus, engines, boilers, pumps, conduits, aqueducts, pipes, tools, and all appurtenances thereunto belonging or in anywise appertaining, and the following real estate, to wit:

First. A certain square of ground, together with the reservoirs, buildings, and all other improvements thereon, and the rights, servitudes, ways, privileges, and appurtenances thereunto belonging or in anywise appertaining, situated in the Faubourg Annunciation, in the first district of this city, designated by the No. eighteen on a plan of said faubourg drawn by B. Lafon, surveyor, dated 15th day of March, 1807, which said square is bounded by Religious, St. Thomas—formerly St. John the Baptist—Richard, and Mar-
169 ket streets, and it has a front on each of the said streets of three hundred feet.

And by a sketch made by Jules Allon d'Hemecourt, city surveyor, dated the 5th day of April, 1878, and annexed for reference to an act of transfer by the city of New Orleans to the New Orleans Water Works Company, passed before Gustave Le Gardeur, Jr., city notary, on the ninth of April, 1878, the said square is designated by the No. eighty-three, and measures three hundred and nineteen feet eight inches and two lines front on said Religious street, three hundred and nineteen feet ten inches and one line front on Market street, and three hundred and nineteen feet ten inches and four lines on Richard street.

Second. A certain piece or portion of ground, together with the buildings and improvements thereon, and the machinery and apparatus, boilers, engines, iron chimneys, and all the rights, privileges, servitudes, ways, and appurtenances thereunto belonging, or in anywise appertaining, situated in the suburb Lacourse, in the first district of this city, in the square bounded by New Levee,
170 Tchoupitoulas, Richard, and Orange streets, and measuring one hundred and ninety-one feet nine inches and six lines front on New Levee street, one hundred and ninety-one feet nine inches and four lines front on Tchoupitoulas street, three hund[red] and eighty-three feet seven inches and three lines front on Richard street, and three hundred and eighty-three feet seven inches and three lines on a straight line running from the termination of the line on said New Levee street to the termination of the line on said Tchoupitoulas street, parallel to Orange street, and dividing the said piece or portion of ground from the property now or formerly be-

longing to A. Caldwell and R. Toledano, which form the remainder of said square, which is designated by the No. thirty-nine on the aforementioned sketch made by Jules A. d'Hemecourt, according to which said sketch said piece or portion of ground measures one hundred and ninety-one feet six inches and six lines front on New
171 Levee street, one hundred and ninety-one feet seven inches and six lines front on Tchoupitoulas street, three hundred and eighty-three feet seven inches and two lines front on Richard street, and three hundred and eighty-three feet and eight inches on said line dividing the said piece or portion of ground from the property of Caldwell and Toledano.

Third. A certain square of ground, together with all the rights, ways, privileges, and appurtenances thereunto belonging or in anywise appertaining, situated in the first district of this city, comprised within Peters—late New Levee—Water, Orange, and Richard streets, and designated by the No. thirty-nine "A," as per plan drawn by Louis H. Pilié, surveyor, dated 29th June, 1867, and deposited, for reference, in the office of H. C. Dibble, then a notary in this city, as plan No. nineteen, according to which said plan said square is divided into twenty-eight lots, numbered from one to twenty-eight, inclusive, and they measure as follows, to wit:

Lot No. one forms the corner of Water and Richard streets
172 and measures twenty-six feet nine inches and two lines front on Water street, twenty-six feet nine inches and three [lines] in width in the rear by one hundred and nine feet and four inches in depth, and front on Richard street.

Lots Nos. two to eleven, inclusive, adjoin each other and measure each twenty-six feet and seven inches front on Water street by one hundred and nine feet and four inches in depth between parallel lines.

Lot No. twelve forms the corner of Water and Orange streets and measures twenty-six feet nine inches and two lines front on Water street, twenty-six feet nine inches and three lines in width in the rear by one hundred and nine feet and four inches in depth, and front on Orange street.

Lots Nos. thirteen and fourteen adjoin each other and measure each twenty-six feet front on Orange street by one hundred and fifty-nine feet eight inches and four lines, more or less, in depth between parallel lines.

Lot No. fifteen forms the corner of Orange and Peters
173 streets and measures twenty-six feet eight inches and six lines front on Peters street, twenty-six feet nine inches and four lines and a half in width in the rear by one hundred and nine feet and four inches in depth, and front on Orange street.

Lots Nos. sixteen to twenty-five, inclusive, adjoin each other and measure each twenty-six feet and seven inches front on said Peters street by one hundred and nine feet and four inches in depth between parallel lines.

Lot No. twenty-six forms the corner of Peters and Richard streets and measures twenty-six feet nine inches and five lines front on

Peters street by one hundred and nine feet and four inches in depth, and front- on Richard street.

Lots Nos. twenty-seven and twenty-eight measure each twenty-seven feet front on said Richard street by one hundred and fifty-nine feet eight inches and four lines in depth between parallel lines.

And by the aforementioned sketch, made by J. A. d'Hemecourt, the said square is designated by the No. twenty-one B, and measures three hundred and nineteen feet four inches and four lines front on Peters street, two hundred and seventy-two feet and eight inches front on Richard street, and the same front on Orange street, being the same property which the said New Orleans Water Works Company acquired by purchase from the city of New Orleans by act passed before said G. Le Gardeur, Jr., city notary, on the said ninth day of April, 1878, registered in the conveyance office of this parish in b'k 110, fo. 453.

And in these presents are especially affected and hypothecated all the property and franchises of said company, including its franchise to be a corporation, and all the property and franchises of said company acquired or to be acquired, and the registration of said mortgage in the office of the record-r of mortgages for the parish of Orleans shall operate on the property and franchises of said company wheresoever situated, and shall be and continue a valid and subsisting mortgage until the payment of the debt secured by it without reinscription.

The said real and personal property, rights, and franchises are so to remain mortgaged and hypothecated until the full and final payment of the said bonds and coupons, the said Edward Toby, president, and Alexander Bonneval, secretary, hereby binding the said New Orleans Water Works Company and its assigns not to sell, alienate, deteriorate, nor in anywise encumber any part or parts of the hereinbefore described and herein hypothecated real and personal rights and franchises to the prejudice of these presents, the whole of which is hereby accepted by the said Adolphe Schreiber for himself and any and all such person or persons who may become the holder or holders of said bonds and coupons.

By reference to the hereunto annexed certificate of the recorder of mortgages in and for this parish of Orleans it appears that there are no other mortgages standing in the name of the said New Orleans Water Works Company and recorded against the aforedescribed premises than—1st, the draining privilege, and, 2d, the privilege in favor of Leeds & Co. for eleven hundred and fifty-nine $\frac{38}{100}$ dollars, interest, &c., for materials furnished city water works, per affidavit sworn to before John McCormick, second justice of the peace, dated September 19th, 1877, which said privileges the said Toby, president, and Bonneval, secretary, in their aforesaid capacity declare to be inoperative and null and voice, and with which declaration the said Adolphe Schreiber declares himself satisfied.

Thus done and passed in my office, at the city of New Orleans aforesaid, the day, month, and year first above written, in presence

of Michel V. Dejan and Louis G. Elfer, competent witnesses residing in this city, who signed these presents with the said appearers and me, notary, after reading hereof.

Original signed:

EDWARD TOBY, *Pres'dt.*
ALEX. BONNEVAL, *Sec'ry.*
A. SCHREIBER.
MICHEL V. DEJAN.
LOUIS G. ELFER.
JAS. FAHEY, *Not. Pub.*

177 Office of the recorder of mortgages for the parish of Orleans, in the city of New Orleans, State of Louisiana.

I, the undersigned, recorder of mortgages in and for the State and parish aforesaid, duly commissioned and qualified, do hereby certify that the within act of mortgage granted by the New Orleans Water Works Company in favor of Adolphe Schreiber has been this day duly recorded in my office, in book of mortgages No. 176, pages 130, 131, and 132, on the first day of April, A. D. 1879.

As witness my official signature and impress of the seal of the mortgage office at New Orleans on said first day of April, A. D. 1879.

[SEAL.] (Signed) J. G. RICHARDSON,
D'y Rec.

I, the undersigned notary, do hereby certify the above and foregoing to be true and correct copies as well of the original act of mortgage by said New Orleans Water Works Company to said Adolphe Schreiber as of the certificate of the recorder of mortgages for this parish appended thereto on file in the records of my office.

In faith whereof I grant these presents under my signature
178 and seal of office at New Orleans this 5th day of November, A. D. 1879.

[SEAL.] (Signed) JAS. FAHEY,
Not. Pub.

Document 4. *Filed February* 17, 1883.

NEW ORLEANS, *Aug.* 1, 1882.

To his honor J. A. Shakspeare, mayor of New Orleans.

SIR: In accordance with your request, the undersigned have visited the Bogue Falaya, in St. Tammany parish, and, having explored a considerable part of the water-shed from which the "St. Tammany Water Works Company" propose, we understand, to furnish this city with a new water supply, now have the honor to report as follows relative to the observations made and conclusions arrived at:

The Bogue Falaya takes its rise in the pine hills near the northwestern corner of St. Tammany parish, flows southerly and southeasterly some 25 miles, receiving in its course several trib-
179 utary streams, as the Little Bogue Falaya, Goodbye's, Hinds, and Tiger branches, all from the northeast, and empties into

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MAR 1 1900

the Tchefuncta river about eight miles above the mouth of the latter, on Lake Ponchartrain.

Its water-shed or drainage-basin extends some 18 miles northward above the proposed site for the dam of the impounding reservoir, and between its eastern and western limits is perhaps 14 or 15 miles, the area being variously estimated by measurement on different maps at from 100 to 145 square miles. We are inclined to consider the latter figure as more nearly correct, and have used 130 square miles as a basis for estimates appearing hereafter. The site selected for the lower impounding dam is about 40 miles nearly due north from the city hall.

The surface soil is a thin, sandy loam, underlaid by sub-sol of yellow and gray clay, almost impervious to water, but containing, as appears from indications on the creek banks, pockets and
180 irregular strata of white or yellow sand and of white unctious clay. In the beds of the streams on their banks, at 20 or 25 feet below the top, clean white sand is usually found. Occasionally gravel appears in the streams, becoming more frequent toward their sources.

Almost the entire region is covered by pine forests, competent judges estimating the total cleared land in the drainage basin at not one-tenth its area, and the cultivated land at less than 1 per cent.

There is but little undergrowth, the woods being usually sufficiently open for grass to thrive among the pines, and but few other trees occurring, except at occasional "bay-galls" or shallow ponds, where the rain-water sometimes stands a few inches deep and a growth of white bay, black gum, sweet gum, water oak, etc., may be found.

These "bay-galls," however, are not numerous, and seldom exceed a half acre in extent. They contain no water in the dry season—have hard bottoms, though sometimes covered with 8
181 or 12 inches of leaf mould. They are the nearest approach to anything resembling a "swamp" found by us in the drainage basin. The recent rain-water in one of the largest was found of a yellowish tinge, but apparently of as good a quality as most freshly-caught cistern water.

We nowhere heard the population estimated at more than 500—that is, not exceeding four per square mile.

The Bogue Falaya and its tributaries run through this territory in depressed troughs or "bottoms" from 100 to 500 or more yards in width, and at a level of 20 to 30 feet below the general surface of the drainage area, the stream itself being from 10 to perhaps 30 yards wide at the water surface, and from 2 feet to 10 or 15 feet deep, forming, as is usual with such streams, a continual succession of pools and rapids. The water is clear, in some places appearing to be fed by springs issuing from the banks near or below the water level. Black bass (or "trout") and other fish frequent these streams and were distinctly seen.

182 Samples of water were taken from various localities and sealed in bottles, which are presented herewith. The samples taken from the Bogue Falaya were evidently not obtained at a time

to secure the clearest and purest water, as heavy showers had occurred but a few hours previously, and that from Little Bogue Falaya was taken at a specially unfavorable time, the stream being swollen some five feet above its normal level from copious rain the night before. Nevertheless all the specimens appear transparent and contain but little visible foreign matter. Samples of the surface water running into the Bogue Falaya and of standing rain-water in ponds or "bay-galls" were also taken. The samples are described on the labels of the bottles and in the list appended.

The question of sufficiency of water supply cannot be determined from any single measurement of the quantity flowing in the stream.

183 A measurement of the Bogue Falaya (not including the Little Bogue Falaya), made on July 28, gave a rate of flow of not less than 72,000,000 gallons per 24 hours. The stream was then considered to be about a foot higher than at its ordinary stage, from which it may be inferred that its ordinary flow is as much as 50,000,000 of gallons per 24 hours.

The Little Bogue Falaya was not measured, it being at a flood stage, and evidently then carrying many times as much water as the bayou proper, though at its ordinary stage it is not believed to carry one-half as much.

The water of the Little Bogue is, however, proposed to be drawn upon, as we understand, and, if added to the above, would make a probable ordinary flow of, say, 75,000,000 of gallons per 24 hours.

The quantity necessary to be supplied is, perhaps, an uncertain factor in the problem. The quantities consumed for all purposes in various cities of this country range from 30 gallons per capita per diem in Providence, R. I., to 106 gallons in Jersey City.

184 In some English cities it has been reduced, by careful inspection, to less than 15 gallons. Nearly all the excess over 35 gallons is considered by most authorities as absolute waste.

But assuming this city to require a larger quantity per capita than most others, and that, from defective plumbing and carelessness, there will be as much waste here as in other cities—we base our estimates on 100 gallons per day per capita—which, for a population of 300,000 (which is some 75,000 more than we have at present), would require 30,000,000 of gallons to be supplied every 24 hours; that is, the probable ordinary flow of the Bogue Falaya, as above estimated, is about two and one-half times the supply required for a population of 300,000 souls.

But it is important to determine, if possible, the minimum supply available, as upon that must depend the amount of storage capacity, if any, that should be provided.

185 We have at present no means of ascertaining the least flow in the Bogue Falaya during extreme drouths, and can only rely upon the records of rainfall kept in New Orleans and upon the experience of other localities for the data on which to base an estimate of the available supply during such drouths.

The streams draining the various water-sheds in this country have been estimated to carry from 15 to 90 per cent.—according to circumstances or locality—of the rainfall received upon their areas. The character of the Bogue Falaya water-shed is such as to make it

probable that at least 20 per cent. of the rainfall could be relied upon in any season as available for a water supply. The rainfall in New Orleans during the past 40 years averaged about 56¾ inches per annum, but in 1862 it amounted to only a fraction over 29 inches. For the three months—October, November, and December—of that year not quite 3 inches of rain fell—that is, these were the dryest consecutive 90 days during the past 40 years.

186 Using these figures, with a drainage area of 130 square miles, we conclude that for such a season as the fall of 1862 the available supply from the Bogue Falaya would but little exceed 15 millions of gallons per 24 hours for the 90 days—that is, only about one-half the supply heretofore estimated as necessary for 300,000 inhabitants. This would show that in such a season the rate of consumption must be reduced, or a quantity of water stored for such an emergency sufficient to make up the deficiency—that is, about 15,000,000 gallons. Storage reservoirs for this or a larger quantity of water can be made, if required, by dams impounding the water in the Bogue Falaya and its various tributaries, though it would seem unnecessary to do so at first, the minimum supply, as above estimated, being more than four times the requirements of the present population, it consuming no more water *per capita* than the quantity found ample in Providence.

187 It is also to be noted that other streams lying to the northward of this water-shed in Washington parish could, by suitable works, be drawn upon should the increase of population ever require a larger supply than the Bogue Falaya will afford, and their sources being in the same character of country, that the water from them should be (as represented) of equal purity.

The water supply of many cities in this country has been found to become less and less, while the population has increased, and sometimes to have suffered pollution to an unendurable extent. This has been caused by the clearing of timber from the water-sheds, tending to diminish the rain-fall and to increase the evaporation, and by their becoming so densely populated as to make the maintenance of a pure supply of water impossible. The water-shed of the Bogue Falaya, with its present sparse population and the small value of its lands, can certainly be preserved with ease from the woodman's destroying ax, and from defilement by house-

188 hold wastes or the foul drainage of manufactories.

The desirability of a supply of clear, soft water for this city—not only for domestic purposes, but for steam-boilers and other manufact-ing purposes—we presume will not be questioned. That such a supply may be obtained from the pine hills of the Florida parishes we consider certain.

Respectfully submitted.

HENRY B. RICHARDSON,
Civil Engineer.

D. M. BROSNAN,
City Surveyor.

JAMES POLLOCK.

PAUL LACROIX.

Motion & Order for Subpœna Duces Tecum. Entered & Filed February 17, 1883.

Circuit Court of the United States, Eastern District of Louisiana.

THE NEW ORLEANS WATER WORKS CO.
vs.
THE ST. TAMMANY WATER WORKS CO. *et al.* } 10031.

189 On motion of J. R. Beckwith & E. H. Farrar, solicitors for complainant, and on suggesting to the court that by reason of the evasive character of the answer of the City of New Orleans, defendant, and its failure to make the discovery prayed for in the bill herein, it is necessary that the said defendant produce the following documents or written proof in its possession:

1st. An attested copy of all the proceedings of the council of said city, at a meeting held on July 12, 1882, or at any other time between the 1st of April, 1882, and the date of filing the bill in this cause, on July 24, 1882, wherein any proceedings were had in any way relating to granting any permission to D. B. Penn, or any other person connected with the St. Tammany Water Works Company, or the said St. Tammany Water Works Company to lay pipes through or in the city, and any and all ordinances adopted or proposed or offered in said council relating thereto, and all proceedings
190 had thereon, and all reports of committees relating to such ordinance.

It is ordered that W. J. Behan or E. L. Bowers, his chief clerk, be summoned to be and appear before F. A. Woolfley, examiner in this cause, on Monday, the 19th of February, 1883, at three o'clock p. m., at the office of the clerk of this court, and that a *subpœna duces tecum* issue to that end.

Subpœna Duces Tecum. Issued February 17th, 1883.

UNITED STATES OF AMERICA:

Circuit Court of the United States for the Fifth Judicial Circuit and Eastern District of Louisiana.

The President of the United States to W. J. Behan, mayor of the city of New Orleans, or E. L. Bower, his chief clerk:

You are hereby commanded to be and appear and to bring with you an attested copy of all the proceedings of the council of said
191 city, at a meeting held on July 12, 1882, or at any other time between the 1st April, 1882, and the date of filing the bill in this case, on July 24th, 1882, wherein any proceedings were had in any way relating to granting any permission to D. B. Penn, or any other person connected with the St. Tammany Water Works Co., to lay pipes through or in the city, and any and all ordinances adopted or proposed or offered in said council relating to such ordinances or proposed ordinance, before F. A. Woolfley, examiner, at the office of the clerk of the circuit court of the United States for the 5th circuit in and for the said eastern district, to be holden at the city of New

Orleans on Monday the 19th day of February, 1882, then and there to be used in evidence in a certain cause now pending therein and to be tried, between N. O. Water Works Co. and St. Tammany Water Works Co. *et al.*, at 3 o'clock p. m , and herein fail not under penalty of two hundred [and] fifty dollars.

Witness the Honorable Morrison R. Waite, Chief Justice of
192 the Supreme Court of the United States, at the city of New Orleans, this 17th day of February, in the year of our Lord one thousand eight hundred and eighty-three, and in the 107th year of American Independence.

[SEAL.] (Signed) T. V. COUPLAND,
D'y Clerk.

Marshal's Return.

Received February 17th, 1883, by the U. S. marshal, and on the same day I served a true copy of the within *subpœna duces tecum* on W. J. Behan, mayor of the city of New Orleans, by handing the same to him in person in the city of New Orleans, La.

(Signed) THOMAS J. BOSWELL,
D'y U. S. Marshal.

Motion and Order Fixing Case for Trial. Entered & Filed Feb'ry 26, 1883.

Circuit Court of the United States, Eastern Dist. of La.

193 THE NEW ORLEANS WATER WORKS CO. } No. 10031.
vs.
ST. TAMMANY WATER WORKS CO. *et al.* }

On motion of J. R. Beckwith & E. H. Farrar, sol's for complainant, it is ordered that this cause be fixed for trial on Thursday, March 1st, 1883, at 11 o'clock a. m., and that the defendants be notified thereof.

Testimony for Complainant. Filed February 28th, 1883.

United States Circuit Court, Fifth Circuit, Eastern District of La.

THE NEW ORLEANS WATER WORKS CO. } No. 10031.
vs.
THE ST. TAMMANY WATER WORKS CO. }

Testimony taken on behalf of complainant under the 67th rule of practice of the courts of equity of the United States, before Francis A. Woolfley, Esq., examiner, duly appointed by said court to take the depositions of witnesses in the above-entitled cause.

194 NEW ORLEANS, *February* 19, 1883.

Present: James R. Beckwith, Esq., solicitor for complainant; G. L. Hall and Charles F. Buck, Esq'rs, solicitors for defendants.

Mr. Beckwith, solicitor for complainant, offers in evidence the statutes of the State of Louisiana granting the charter to the Commercial Bank of New Orleans, referred to in the bill of com-

plaint; also the transfer of the property of the Commercial Bank of New Orleans to the city of New Orleans, marked No. 1, being a notarial act; also the act of the Legislature of Louisiana incorporating the New Orleans Water Works Company, referred to in the bill of complaint of date —, with amendments; also a certified copy of the act of transfer by the city of New Orleans to the New Orleans Water Works Company, before G. Le Gardeur, notary, marked Document No. 2; also a certified copy of the act of
195 mortgage of the New Orleans Water Works Company to Adolphe Schreiber, marked Document No. 3.

WILLIAM S. DE VAN, a witness produced, sworn, and examined on behalf of complainant, says:

By Mr. BECKWITH, for complainant:

Q. What is your age and occupation?

A. I am thirty-nine years of age; my occupation is that of a broker.

Q. How long have you been a broker?

A. About six or seven years.

Q. Where have you carried on that occupation?

A. On Carondelet street, in the city of New Orleans.

Q. In what class of brokerage?

A. Stocks, bonds, and securities.

Q. Have you ever, as a broker, dealt in the stock of the New Orleans Water Works Company?

A. Yes, sir.

Q. Were you dealing in that stock at or about the time that the St. Tammany Water Works Company was organized about the Bogue Falaya and set in motion?

A. Yes, sir.

Q. What effect, if any, did that project—the introduction
196 of the Bogue Falaya water through the instrumentality of the St. Tammany Water Works Company—have upon the market value of the stock of the New Orleans Water Works Co.?

A. Well, I should say from ten to twelve dollars, at least.

Q. Advance or depression?

A. Depression.

Q. Did you, at any time prior to that time, have any brokerage transactions in relation to the mortgage bonds of the New Orleans Water Works Company?

A. I had no transactions in the mortgage bonds of the company.

Q. Were transactions being had on the streets on these bonds?

A. Yes, sir.

Q. Do you know or can you state whether the price of the bonds was affected?

A. Yes, sir; I know that positively.

Q. To what extent and amount?

A. Well, we could not get a bid over ninety-five cents and a dollar, and they were selling for one hundred and fourteen before.

Q. Do you know of any other cause operating to depress this

197 stock, except the threat of the introduction of the Bogue Falaya water into the city and the overthrow of the exclusive privilege of the New Orleans Water Works Co.?

A. No, sir; I do not know of any other cause.

Q. Have these bonds recovered?

A. To a certain extent; for some little time back we are beginning to have some little bids on them.

Q. Have they reached the standard they had prior to the Bogue Falaya project?

A. No, sir.

Cross-examined by Mr. HALL, for defendant:

Q. Was not there a sewerage system organized for the city of New Orleans, and an ordinance passed for putting into operation the New Orleans Drainage Association?

A. Yes, sir; there was; we understood there was.

Q. Was it not understood in financial circles that the putting into operation of the sewerage company would aid the New Orleans Water Works Company materially?

A. It was at that time.

Q. Is it not a fact that the ordinance granted them a certain
198 time—say two years—in which to place the system in operation, and that this time had elapsed?

A. I don't think that we understood any time, or in what time it was they were to go to work on this sewerage; I never heard any one say.

Q. Did not that buoy up the New Orleans water-works stock?

A. It did at the time of that excitement, when the sewerage question was before the city council.

Q. Is it not a fact it was well understood that that sewerage or drainage company would not go into active operation about six months ago?

A. I do not think it was understood.

Q. Was not it the current rumor on the street?

A. We did not have a great deal of confidence in that.

Q. Was not that because of the depression of the New Orleans water-works stock?

A. There was no doubt it had its effect at the time; it was some time after the St. Tammany affair came in; we had gotten over the sewerage epidemic.

199 Q. You speak of the mortgage bonds being one hundred and fourteen?

A. Yes, sir.

Q. When was that?

A. That was just about the time they commenced this St. Tammany business.

Q. What are they now?

A. Well, about one hundred and two or one hundred and three; that is the best we sell them for.

Q. Have they not been lower than that recently?

A. Well, they have been lower; yes, sir.

Q. Has not the recent passage of the ordinance forcing landlords to have water to the extent of two hundred gallons of water to the room supplied to all premises within the reach of the water works company had the effect to raise the value of the stock of the New Orleans Water Works Co.?

A. Yes, sir; I think it has to some effect.

By Mr. BECKWITH, for complainant:

Q. The recent rise in the stock, as well known, is attributable somewhat to what is known as the wet ordinance?

A. Not altogether.

200 By Mr. HALL, for defendant:

Q. There was a change of directors and managers of the New Orleans Water Works Company within the past year?

A. Yes, sir.

Q. Soon after that change is it not a fact that the stock changed in value?

A. Yes, sir; it did.

EDWARD L. BOWER, a witness produced, sworn, and examined on behalf of the complainant, says:

By Mr. BECKWITH, for complainant:

Q. Do you hold any position in the city government of the city of New Orleans?

A. Yes, sir; I am chief clerk of the mayor.

Q. How long have you occupied that position?

A. About fifteen years—that and assistant secretary at one time.

Q. Can you produce any of the minutes of the council of the city of New Orleans between May and July last, 1882?

A. Yes, sir. I have brought with me the minutes of July 12th, 1882.

201 Q. That is the minutes of the council of the city of New Orleans?

A. Yes, sir.

Q. Will you state whether from these proceedings there was any action taken in reference to the St. Tammany Water Works Company?

A. Yes, sir; an ordinance of July 12, 1882, was presented to the council by the committee of the whole, entitled An ordinance providing for a contract between the city and D. B. Penn, David Hughes, Gilbert L. Hall, David R. Calder, Allen Jumel, George Purves, R. E. Rivers, F. J. Quinlan, John Calder, Charles Le Sassier, Adam Thomson, P. K. Thompson, J. Hassenger, A. H. Sieward, and J. J. Langles and others, composing the St. Tammany Water Works Company, for the right to lay pipes, etc., through New Orleans. That was referred to the committee of the whole by the council.

Q. Do you know whether any action was ever had on that ordinance beyond what is indicated in that report?

A. No, sir; no final action was ever had upon the ordi-
202 nance. It was simply before the committee of the whole, and I believe the council were enjoined from doing anything further. It never came into the shape of an ordinance.

Q. Do you know, or do you find in the records at the city hall, that ordinance as offered?

A. Yes, sir; I found in a pigeon-hole of the committee of the whole this ordinance, which is the ordinance referred to, because it has the mark of the secretary of the council.

Mr. Beckwith offers in evidence the ordinance referred to and produced by the witness and marked ——.

Q. This endorsement, "ready by title and referred to committee," what does that refer to?

A. That is the minute of the clerk, read before the council and by the council referred to the committee of the whole. That is the only copy there that I know of; I found it among these proceedings.

203 Q. Now, was any action taken by the city to investigate the Bogue Falaya and the project for introducing the water into the city?

A. Yes, sir; I believe so, through the mayor, and the water was analized by Doctor Joseph Jones. Here is the letter addressed to Dr. Joseph Jones.

Q. Do you know whether any committee of men were appointed to go to St. Tammany parish or Bogue Falaya and examine it?

A. Yes, sir; there was a committee appointed.

Q. By whom?

A. By the mayor, I believe; that committee brought specimens of the water, and that water was referred to Doctor Jones to be analized. Here is the letter which was sent to Doctor Jones by the mayor or by his direction:

Joseph Jones, M. D., president board of health.

SIR: His honor, the mayor, requests you to analize the water herewith sent at the earliest convenience, and make report to him of the result of the said analysis. The water sent is that taken by
204 the committee appointed by the council from the Bogue Falaya to be tested for its purity for drinking purposes.

By direction of the mayor.

E. L. BOWER,
Chief Clerk.

Q. This water was analized by Doctor Jones?

A. Yes, sir.

Q. And some report made?

A. Yes, sir.

Report offered in evidence by complainant.

Q. Do you know, or do you remember, who was appointed the committee by the mayor to go to St. Tammany and examine Bogue Falaya and its surroundings?

A. No, sir; I don't remember the members; the city surveyor was one of the parties.

Q. See by the report?

A. Yes, sir; these were the parties—Henry B. Richardson, civil engineer, and D. Brosnan, city surveyor, and James Pollock and Paul Lacroix.

Q. Did they make a report?

A. Yes, sir; they brought bottles of water with them, and these bottles were sent to Doctor Jones to be analized.

Q. Did you find their report among the papers in the city hall?

205 A. I did not look for their report, I only saw this in that pigeon-hole.

Q. Then, after this report was made, there was no further action taken in the council?

A. No, sir; it never went from the committee of the whole. The council never took any further action, and no ordinance was ever passed.

Q. You cannot state from your recollection whether that printed report which you hold in your hand is the report of that committee?

A. I suppose this is a copy of their report. There is no question about that being a copy of their report.

Mr. Beckwith, for complainant, offers in evidence the printed document marked No. 4, being the report of the committee of the whole.

JOSEPH SHAKESPEARE, a witness produced, sworn, and examined on behalf of complainant, says:

By Mr. BECKWITH:

Q. Were you mayor of the city of New Orleans during the summer months of 1882?

A. Yes, sir.

Q. Do you remember of any application by the St. Tam-

206 many Water Works Company for the right to run pipes for the purpose of introducing the Bogue Falaya water into the city of New Orleans?

A. Yes, sir; there was an ordinance presented by the gentlemen composing that company, which was sent to the council and referred from the council to the committee of the whole.

Q. Some time in July, was not it?

A. I don't recollect, but some time in the summer.

Q. Will you state what was done after the reference to the committee of the whole?

A. At the meeting of the committee of the whole, the committee of the whole instructed me to appoint a commission to examine the waters of the Bogue Falaya. I commissioned Mr. Richardson and Mr. Brosman on the part of the city, and notified the gentlemen of the Bogue Falaya that I had commissioned them and for them to name two gentlemen to go with them. They named Mr. Pollock

and Mr. Lacroix. They went and examined the waters, and
207 were gone about a week, and came back with a number of samples of the water and made their report.

Q. What was done with this report when they came back?

A. It must be among the papers in the mayoralty.

Q. It was never brought up again in the council?

A. No, sir; on account of some legal proceedings, or something—that was all. It never was brought up again.

JAMES D. HOUSTON, a witness produced, sworn, and examined on behalf of complainant, says:

By Mr. BECKWITH:

Q. Did you have any interest in the New Orleans Water Works Company in June and July of last year?

A. Yes, sir.

Q. Do you remember the time of the inception of the projected organization of the St. Tammany Water Works Company to bring the Bogue Falaya water the city of New Orleans?

A. Yes, sir.

Q. Were you at that time owner of any stock or bonds of the company?

208 A. I owned stock.

Q. Did you hold any relation to the company in any way as officer or director?

A. As director.

Q. Can you state whether or not this projected enterprise of bringing the Bogue Falaya water into the city by the St. Tammany Water Works Company and the threatened invasion of the supposed exclusive right of the New Orleans Water Works Company in the city of New Orleans had any effect upon the stock?

A. Yes, sir; it did affect the stock.

Q. To what extent did it affect the stock?

A. Well, I cannot say exactly to what extent or how much it affected it. The stock was bid forty-nine and something, I think, three or four days before the application was made to the council, and forty-four was the best bid for it right after that application—within a week or ten days. The reports of the stock exchange will show that.

Q. The New Orleans Water Works Company was depend-
209 ent for its money for extending its works by the sale of its mortgage bonds?

A. Yes, sir; entirely.

Q. What effect did the project of the St. Tammany Water Works Company have upon the capacity of the Water Works Company to dispose of these bonds for their value?

A. They were selling at the time this application was made for one hundred and fourteen and one hundred and sixteen and a half, and after the application was made to the city the bonds fell, and there was hardly any business in them at all. I never heard of

them being over one hundred or one hundred and one. It became so that the company did not sell any bonds, although they had a new improvement account and owes current expense money.

Q. How much of the bonds provided for in the mortgage had been disposed of prior to this application of the Bogue Falaya St. Tammany Water Works Company?

A. Three hundred and fifty thousand dollars.

Q. The balance were not issued?

210 A. No, sir; not issued yet; they are in the vault of the company. There were five hundred thousand dollars in bonds authorized by the city and three hundred and fifty thousand disposed of, leaving one hundred and fifty thousand still on hand.

Q. Then, the effect of this attack upon the New Orleans Water Works Company by the St. Tammany Water Works Company was to keep these out of the market?

A. Yes, sir; the depreciation was such that the company never attempted to sell them, although there were from five to seven thousand dollars due for current expenses. They never sold a bond on account of the depreciation, but put back the payment of the expenses.

Q. Is the income of the water works company from the sale of water enough now to enable the company to carry on the improvements that were needful to carry on the original plans of the company?

211 A. No, sir; for this reason: that the improvements are necessary to the increased earnings of the company, and would be if the improvements were made which are necessary. The charter grants the company the right to issue two million dollars' worth of bonds for the purpose of improving their works and giving clear water, and the company has issued three hundred and fifty thousand of them.

Q. While the exclusive right of the New Orleans Water Works Company was threatened or denied, can the balance of the two millions of bonds be placed in such a manner as not to be sacrificed?

A. I doubt it. I don't think it can be, nor does any person want it.

Q. How much of the security for the two million of bonds would rest upon the exclusive privilege of the company in the city of New Orleans, do you think?

A. Well, if there was no exclusive privilege to supply water I think it would not be over half, for this reason: In the organization of the company the company was burdened with a free sup-

212 ply of water to the city, and a great many other things, which the new company would not have, and to come into competition with the new company, with no burden placed upon it as the old company has, she cannot of course contend; it would be impossible.

Cross-examined by Mr. HALL:

Q. Is not the New Orleans Water Works Company exempt from taxation by a law of the State?

A. Yes, sir; by the State, but not by the city. The city has sued the company for taxes.

Q. When were these three hundred and fifty thousand dollars' worth of bonds actually issued?

A. Prior to the St. Tammany Water Works project, and there has been none of them issued since.

Q. Were they not issued about four years ago?

A. No, sir; they have been issued partially.

Q. Have you anything to refer to about that?

A. No, sir; I do not need anything.

213 Q. I wish you had, because I have examined the title of three years ago.

A. I know that; I can fix the date perfectly.

Q. Fix the date when these three hundred and fifty thousand dollars' worth of bonds were issued.

A. They were issued in the years of 1879 and 1880; the majority of them in 1880.

Q. Were they not all issued at one time?

A. No, sir; you may make a distinction on the word "issued." If you mean that they were all issued by permission and guarranty of the city, yes; but by sale, no, sir.

Q. When was the last of the $350,000 worth negotiated?

A. In 1880.

Q. Had there been any effort of the company to negotiate the whole of these bonds, prior to the summer of 1882, other than the $350,000 already out?

A. No, sir.

Q. Has there been any effort to negotiate any since the summer of 1882?

A. No, sir; none whatever, on account of the depreciation. They would break the market by issuing them.

214 Q. Was not the suit against the New Orleans Water Works Company for forty-three hundred and forty-four shares of stock?

A. No, sir; you cannot say the city against the New Orleans Water Works Co.

Q. Please describe the nature of the suit.

A. The city of New Orleans owned forty-three hundred and forty-four shares of stock in the New Orleans Water Works Company, which were seized in the year 1879 by some judgment creditors in the United States court and sold at marshal's sale. The New Orleans Water Works Company was made a party to the suit as a stakeholder, and it was ordered to transfer that stock by order of the court, which it refused to do, and the marshal transferred the stock on the company's books, as it shows there in the marshal's handwriting transferring the stock. The company afterwards refused to recognize the transferrees of the marshal, and there was a mandamus issued to us and an injunction against our ques-

215 tioning them, and she is since then like everybody else that has been made a party to the suit.

Q. Who were the parties litigating then?

A. The seizing creditors, Freeman Clarke, Charles T. Howard, John A. Morris, and John Klein, and the others who bought the stock were made parties—Seixas, Benjamin, and John A. Walsh. I believe these were the only parties in whose names the suits were instituted.

Q. Did not these suits go to the United States Supreme Court?

A. Only one.

Q. And the judgment there was reversed?

A. There was a suit went to the Supreme Court of the United States on appeal. The city asked the court to grant an injunction to restrain the sale, which was refused by the court, and an appeal was taken by the city to the Supreme Court of the United States and the decision of the circuit court was reversed, but none of the other cases were ever before the Supreme Court of the United States.

Q. Was it not claimed on the market of stocks and bonds that the Water Works Company might be liable for the duplicate
216 issue of the forty-three hundred and forty-four shares of stock growing out of the fact that the judgment of the United States circuit court had been executed by the marshal before the decree of the United States Supreme Court on the injunction suit had been rendered?

A. That there might be a restitution made.

Q. That is the question that is in litigation?

A. If I go by what the rumor is upon the street I will say, Yes. There were any number of rumors, but that they had any effect, No. No man believed in it. Now to evidence that is this—I will give you something to demonstrate that: The day that the decision came here from the Supreme Court there were wild rumors circulated all over the street, and the stock went from forty-five in the morning to forty and rallied again to forty-five and three-eighths. It went up over the original price that it was selling at that morning. I bought stock that day at forty and forty-one, but at the close
217 of the evening it was worth forty-five and something.

Q. Is there not litigation over these same shares of stock?

A. Yes, sir.

Q. The matter is still unsettled with regard to these forty-three hundred and forty-four shares?

A. Yes, sir; still unsettled.

Q. What was the dividend on this stock of the New Orleans water works stock in 1880 and 1881?

A. Two per cent. In 1881 it was one and a half per cent. The dividend is not declared for 1882 yet. We run from April to April. It would be the dividend of 1882 that would be due in 1883.

Q. The dividend due in 1882 was one and a half—that is, half a cent less than the preceding year?

A. Yes, sir.

Q. Is not that because of the depreciation in 1882?

A. Yes, sir; the stock sold down to about forty-six; then, in July, there was an election for a new directory of the company and
218 the stock went up to forty-nine [and] fifty, and just at that time was the introduction of the Bogue Falaya into the coun-

cil. That depreciation had been met and passed over in that year of 1882.

Q. For what portion of the year?

A. The Bogue Falaya project, according to my recollection, was after the election in July. Our election took place on the first Monday in July. The first organization of the company took place in the preceding year; I don't know whether it was that far back; my first recollection of it was that I saw the notice of the application in the papers and the passage of the right of way in Congress. Prior to that I saw the notice that Mr. Ellis would offer such a bill. That took place in the December session of Congress the preceding year.

Q. You are not positive as regards the dates?

A. No, sir; I am speaking of this now from recollection; I am not positive regarding the dates, but I am certain of the dates
219 as regards the stock.

Q. When did the Legislature meet in 1882?

A. I think it was in June—May or June.

Q. Is it not a fact that there was an application made to the Legislature of Louisiana for the passage of a law granting the right of way and certain privileges to the St. Tammany Water Works Co.?

A. Yes, sir.

Q. That was in May, 1882, or about that date?

A. Yes, sir.

Q. Did that affect the water-works stock?

A. No, sir; not particularly; nobody thought it would amount to anything at that time.

Q. Is it not a fact that you, as a director and officer of the New Orleans Water Works Company, had been before the city council asking for some reduction of taxation on the company and its stock in the spring or early summer of 1882?

A. No, sir; I think your idea is correct, but the manner in
220 which you put the question compels me to answer no. I will state that the city, in violation of that portion of the charter exempting the company from taxation, taxed the company, and a committee of us went before the council and asked that the city would pay for the water or discontinue these suits, one or the other, as the section that exempts us from taxation states that, in consideration of that exemption, we would furnish the city free, as we were furnishing the city at their own estimate three or four times the value of their taxes.

Q. Was the president, Mr. Toby, with you?

A. Yes, sir; I think so.

Q. Did you not state to the council that the New Orleans Water Works Company would not be able to pay the two per cent. dividend under the condition of affairs as then existed in the city and the supply of water that was required for the inhabitants, etc.?

221 A. I have no recollection of that. I used whatever argument I had in my mind at the time being most serviceable to the company, but I have no recollection of that argument.

Q. What was the occasion of not paying the one and a half per cent. dividend in April, 1882?

A. Because the company did not make any more.

Q. Were the affairs of the company considered in a bad fix up to the time the new board took charge of the company's affairs in August, 1882?

A. Considered so by whom?

Q. Well, by those having stock in the company and the financial men of the city?

A. No, sir; I cannot say that, for this reason: a large portion of the stockholders, if my recollection serves me right, voted to the extent of eighty thousand shares to keep in the old administration.

Q. How large a vote had to take place to change it?

A. It must have taken a larger vote to change it.

222 Q. Were the bonds of the New Orleans Water Works Company ever quoted at less than one hundred and ten?

A. I have to answer it as before. The price offered for a thing is the quotation price of it, that which it can be sold for, not what the person wants for it. There was much less than one hundred and ten offered for it, and nobody could be found to give a hundred, yet I doubt any man holding them would sell them for less than a hundred and ten; but if you wanted to sell them you could not have got one hundred for them. I limit this to time of the introduction and discussion of the ordinance of the St. Tammany Water Works Company here. Right about that time you could not get a hundred for them.

It is admitted that the Exhibit "A" attached to the bill of complaint is a true copy of the charter of the St. Tammany Water Works Company, showing the date of its recordation in the

223 office of the recorder of mortgages for the parish of Orleans.

UNITED STATES OF AMERICA,
Eastern District of Louisiana, } *ss:*

I, F. A. Woolfley, examiner, duly appointed by the circuit court of the United States for the eastern district of Louisiana to take the testimony of William S. De Van, Edward L. Bower, Joseph A. Shakspeare, and James D. Houston, witnesses on the part of the complainant, do hereby certify that on the day named in the depositions hereto annexed I was attended at the office of the clerk of said court, in the city of New Orleans, by the counsel and witnesses aforesaid; that the said witnesses were duly sworn and examined and their depositions reduced to writing, and that the signatures of the said witnesses to their depositions were waived by consent of said counsel. I further certify that the following exhibits—viz., charter of the Commercial Bank of New Orleans; transfer of

224 property by the Commercial Bank of New Orleans; act of the Legislature of the State of Louisiana incorporating the New Orleans Water Works Company; transfer *of* the city of New Orleans to the New Orleans Water Works Company; mortgage of the New Orleans Water Works Company; minutes of the city council of July 12th, 1882; proposed ordinance of the city of New Orleans relative to the St. Tammany Water Works; analysis of Bogue Falaya water, and the report of the committee relative to the Bogue Falaya

water—were introduced in evidence during the taking of said depositions.

New Orleans, February 28th, 1883.

(Signed) F. A. WOOLFLEY,
Examiner.

The transfer of property by the Commercial Bank of New Orleans, referred to in the foregoing depositions and offered in evidence, has already been transcribed and will be found at page 128 of this transcript.

225 The transfer of the city of New Orleans to the New Orleans Water Works Company referred to in the foregoing depositions and offered in evidence has already been transcribed and will be found at page 77 of this transcript.

The mortgage of the New Orleans Water Works Company to Adolph Schreiber referred to in the foregoing depositions and offerred in evidence has already been transcribed and will be found at page 153 of this transcript.

Minutes of the City Council of July 12th, 1882.

Referred to in the foregoing deposition of E. L. Bower and offered in evidence by complainant February 19th, 1883.

Official Proceedings City Council.

Adjourned regular meeting.

CITY HALL, NEW ORLEANS,
WEDNESDAY, *July 12th*, 1882.

Pursuant to adjournment the council met this day at 1.30
226 o'clock p. m. in regular session.

Present: Hon. Joseph A. Shakspeare, mayor, presiding, and Administrators Delamore, Fagan, Fitzpatrick, Huger, Mealey, and Walshe.

Absent: Guillotte.

* * * * * * *

By committee of the whole:

An ordinance providing for a contract between the city and D. B. Penn, David Hughes, Gilbert L. Hall, David R. Calder, Allen Jumel, Geo. Purves, R. E. Rivers, F. J. Quinlan, John Calder, Chas. Le Sassier, Adam Thomson, P. K. Thompson, J. Hassinger, A. H. Sieward, and J. J. Langles and others, composing the St. Tammany Water Works Company, for the right to lay pipes, etc., through New Orleans.

Referred to the committee of the whole.

* * * * * * *

On motion the council adjourned.

GEO. W. FLYNN, *Secretary.*

227 *Ordinance of the City of N. O. Relative to St. Tammany Water Works Company.*

Referred to by E. L. Bower in his deposition. Offered in evidence on behalf of complainant February 19, 1883.

An ordinance to provide for a contract between the city of New Orleans and Davidson B. Penn, David Hughes, Gilbert L. Hall, David R. Calder, Allen Jumel, George Purves, Robert E. Rivers, Francis J. Quinlan, John Calder, Charles Lessassier, Adam Thomson, Philip K. Thompson, J. Hassingen, A. H. Sieward, and J. J. Langles, and associates, all of the city of New Orleans, composing the St. Tammany Water Works Company, the right to lay pipes, mains, and conduits in and along all streets, gardens, parks, alley-ways, avenues, and other public places within the limits of New Orleans, and the right to enter upon and break the surface of the said streets, parks, gardens, alley-ways, and other public places, and to excavate same for that purpose, in order to supply the
228 city of New Orleans and the inhabitants thereof with pure clear water for the term of their charter, to fix the rate at which water shall be delivered, and to make regulations to govern and to define and punish violations of the same.

Be it ordained, etc., by the city council of New Orleans, That the mayor be, and is hereby, authorized to enter into a notarial contract for the term of its charter with the St. Tammany Water Works Company, a company organized under the law of the State of Louisiana and domiciliated in the city of New Orleans, and whose charter was established by act before Samuel Flower, notary public, passed the 2nd day of May, 1882, which contract shall embrace the following stipulations and such others as may be proper and necessary to carry them into effect:

First. Be it further ordained etc., That the said St. Tammany Water Works Company shall have the right during the term of its charter to lay at its own expense any and all necessary mains,
229 pipes, and conduits in and along the streets, alley-ways, avenues, parks, gardens, and other places within the limits of New Orleans, at a depth of not less than two and one-half ($2\frac{1}{2}$) feet cover for the mains, the house-trenches to be nowhere less than two feet below the surface; to erect and construct any necessary works, reservoirs, engines, or machines for the purpose of supplying the city of New Orleans and the inhabitants thereof with water; and to that end the St. Tammany Water Works Company is hereby authorized and empowered to enter upon any and all said places and to break at their own expense the surface and to make necessary excavations thereon when the same may be required for aforesaid purposes, in such manner as to produce the least possible inconv[en]ience to the city, its inhabitants, or the travelling public.

Second. Be it further ordained, etc., That the said St. Tammany Water Works Company shall repair at its own expense, under the supervision of the city surveyor, any and all places entered
230 upon and broken by it for the purposes herein mentioned, and shall reinstate said places in as good condition as when

entered upon within thirty-six hours, and its neglect or refusal to do so after notice from the city surveyor shall subject it to a penalty of twenty-five dollars for each day and for each place, after notice given, to be recovered before any competent court. If such work of restoration be not commenced within forty-eight hours after notification from the city surveyor, said work may be done by said surveyor at the expense of the company.

Third. Be it further ordained, etc., That said St. Tammany Water Work Company shall not charge the inhabitants of New Orleans a price greater than that now established by the tariff rates for —, and that said company shall make all connexions between its mains conducting water through the streets to the banquettes, connexions from banquettes to and through houses to be paid for by owners.

Fourth. Be it further ordained, etc., That said St. Tammany Water Works Company is hereby prohibited from transferring to any individual or corporate body whatever the franchises secured
231 to it under the provisions of the ordinance, and any such transfer for any cause whatever shall "*ipso facto*" work an immediate forfeiture of the privileges and franchises conferred by this ordinance: Provided, That this shall not be so construed as to prevent an amalgamation or conjunction with another company operated or formed for a like purpose.

Fifth. Be it further ordained, etc., That whenever a majority of property holders and *bona fide* residents within on- square of any main shall apply for an extension of pipes, and the consumption of water will justify the laying of pipes in such localities, the said St. Tammany Water Works Company hereby bind- itself to have such pipes laid without unnecessary delay.

Sixth. Be it further ordained, etc., That said St. Tammany Water Works Company hereby binds itself to provide water free of charge to any charitable institutions or for public baths or lavatories, to be designated by the city council: Provided, Said buildings are situated on the streets in which pipes of the said company shall
232 be laid, and that proper connection pipes be furnished by the city or other owners of such property.

Seventh. Be it further ordained, etc., That said company shall commence its work of construction (within the city limits) within two years from the date of this contract, and shall bind itself to maintain a lead of seventy-five (75) feet after the completion of the work.

Eighth. Be it further ordained, etc., That the city shall at all times, by a proper exercise of its public powers and other powers, protect the pipes and other property of the company from unnecessary waste, pollution, interference, obstruction, or injury.

Ninth. Be it further ordained, etc., That the rights and privileges herein conferred shall not in any manner render the city of New Orleans liable to any other water works company to whom franchises may have been granted by legislative enactments, and the said grantees accept the privilege herein given with the understanding that the city of New Orleans is not to [be] made a party to any legal action which may be brought by any individual or corpora-

tion against said grantees. Nothing in this ordinance, or in
233 the grant to lay mains, pipes, and conduits, or other rights, or in the notarial act made in pursuance of this ordinance shall be construed as binding the city of New Orleans or making said city liable, directly or indirectly, or in warranty, for any claims of citizens or corporations on account of said ordinance, grant, or notarial act, or any claims for infringement of rights, or damages to persons or property caused by grantees, or in any way resulting from the acts of said grantees, nor for any claims, damages, losses, or injuries sustained by said grantees, in case they should be deprived of their rights or be interfered with in the exercise thereof by any persons or corporation whatsoever, save it be the lawfully constituted authorities of the city; nor shall the city be liable for any work done or materials used in paving or repairing banquettes or streets or any public thoroughfare in pursuance of this grant or under the direction of said contract with said grantees.

234 *Analysis of Bogue Falaya Water.*

Referred to by E. L. Bower in his deposition. Offered in evidence on behalf of complainant February 19th, 1883.

Bogue Falaya.

Report of Dr. Jones to the city council. An interesting analysis of soil and water, followed by general conclusions.

In answer to the request of the mayor to analyze the samples of soil and water procured by the Bogue Falaya commission some days ago and to make a comparison with the Mississippi and rain-water in such manner as to show their relative merits, Dr. Joseph Jones, president of the board of health, yesterday submitted the following:

His Honor Jos. A. Shakspeare, mayor, city of New Orleans:

DEAR SIR: On the 2d of August I received samples of the soil and waters of the Bogue Falaya river and basin, and, in accordance with the request of your honor, present the following state-
235 ment of the general results of the investigation:

1. Physical, chemical, and microscopical properties of soil from the basin and banks of the Bogue Falaya river.

(*a.*) Surface earth.—This sample embraced the surface soil with grass growing upon it, and extended to the depth of about 3½ inches. Surface of a dark gray, inclining to a dark bla-kish brown. This color gradually shaded into grayish yellow earth. The darker coloring of the surface was due to small quantities of carbonized organic matter.

Under the microscope the soil was found to consist of minute particles of silex and silicates, with slight evidences of organic matter.

When moistened with water the soil formed a soft yielding mass, with but little cohesion, and was entirely different in its physical properties from the thick tenacious clay of the Mississippi valley, and more especially of the delta.

236 The porous, sandy nature of this soil, as well as the absence of organic matter and lime salts, and those of the alkalies and alkaline earths establish the view that this soil should be regarded as unsuited to the purposes of agriculture unless highly enriched by manure. This soil appears to be incapable of sustaining vegetation to any extent, and seems adapted only to the growth of the pine and to the stunted forms of the more hardy grasses and plants.

The mineral acids exerted little or no appreciable effect upon this silicious soil, and the solutions thus obtained yielded only a mere trace of lime.

The surface soil of the Bogue Falaya river is thus shown to be silicious in its constitution, to a certain extent porous, and to be devoid of deleterious, organic, and mineral constituents, and to be incapable of impairing the quality of the water collected from the basin or water-shed.

(*b.*) Sand from the water level 25 feet below the surface of the plateau.

237 Light, cream-colored sand, dry and fine. Under the microscope this sand was found to consist of numerous transparent and colorored crystals of silicious acid and silicates. The greatest portion of the sand consisted of transparent crystalline particles of silicic acid, varying in diameter from $\frac{1}{50}$ to $\frac{1}{100}$ of an inch. I discovered with the microscope no organic remains, vegetable or animal, recent or fossil, in this sand.

Concentrated chemically pure nitric and hydrochloric acid appeared to produce no perceptible or recognizable effects upon the sand.

(*c.*) Sample of soil taken from beneath the surface at various depths—2 feet below the surface, 8 feet below the surface, 12 feet below the surface, water level; 25 feet below the surface of plateau.

After careful microscopical and chemical examination these specimens were found to present essentially the same characteristics, and resembled closely the surface soil, differing in the degree
238 of cohesion of the particles and density and solidity of the strata.

Under the microscope all these specimens presented the same general characters, namely, collections of fine silicious particles, ranging from $\frac{1}{100}$ to $\frac{1}{500}$ of an inch in diameter.

This deposit, although presenting some of the appearances and properties of light-colored clay, more nearly resembled a soft, incoherent sand rock, composed chiefly of minute particles of silex and silicates, and the entire formation is more porous than the ordinary clays of South Carolina, Alabama, Mississippi, and Tennessee.

The concentrated nitric and muriatic acids caused no effervescence with any of these specimens and exerted little effect, only traces of lime being obtained from the filtrates.

As the entire thickness of the stratum (25 feet) was of a porous, silicious nature, devoid of soluble salts, of lime, and also of organic remains, recent or fossil, it forms a natural filter for the rain-
239 water falling upon the water-shed of the Bogue Falaya river.

Geological source of the waters of the Bogue Falaya river.

This and other rivers of Louisiana and Mississippi on the east of the delta derive large portions of their water from the great orange-sand formations which characterizes the greater part of the surface of Mississippi.

The thickness of the orange-sand formation is extremely variable. As originally deposited, its strata appears to have been dependent on the degree of denudation which the strata of the more ancient formations had previously undergone.

The greatest thickness observed by the learned and accomplished geologist, Professor Eugene W. Hilgard, was in a well dug at the University of Mississippi to a depth somewhat more than two hundred feet. One hundred feet is no unusual thickness, but most commonly it varies between 40 and 60 feet.

240 As the name indicates, the prevailing materials composing this formation are silicious sands. They are usually colored more or less with hydrated peroxyde of iron or orange yellow ochre. The color thus imparted gives an endless variety of tints, while deposits of white sand suitable for the manufacture of glass are not uncommon.

The orange sand formation of Mississippi and Louisiana contains no fossils whatever characteristic of itself; and is without any appreciable organic matter.

The rounded shape of the grains of this great sand formation and the relations of its materials to those of the underlying formations proves beyond question that its deposition took place in flowing water; nor can there be any doubt that the general direction of the current was from north to south, although locally changed or directed by pre-existing inequalities of the surface.

241 The water percolating through this orange sand formation at the present time are remarkable for the small amount of the salts of lime and magnesia which they contain, and may, therefore, be uniformly characterised as freestone waters of excellent quality for drinking, bathing, cooking, washing, and for various manufacture.

Results of examination of samples of water collected from the Bogue Falaya river by the special committee appointed by the mayor and administrators of the city of New Orleans.

The following samples of water from the Bogue Falaya river were submitted for analysis:

No. 1. Water from Bogue Falaya, taken at 8 o'clock a. m., July 28th, 1882, from near bridge below Mulberry Grove. Heavy showers night before, and Bogue Falaya swollen one to two feet above ordinary.

No. 2. Water taken from surface flow from pine flats running into Bogue Falaya on west side, about three miles above Covington. Sample taken at 12 (noon), July 28th, 1882, when running

242 over edge of the bank into Bogue Falaya.

No. 3. Water taken from Bogue Falaya at 12.30 p. m., July

28th, 1882, at site of Martey's old mill, four or five miles below Covington.

No. 4. Water from pond or slough or swamp on each side of Bogue Falaya, not exceeding an acre in area; has no present outlet to bayou; not over six or eight inches deep; goes dry in dry times. Taken at 1 o'clock p. m., July 28th, 1882.

No. 5. Water from Bogue Falaya, taken July 28th, 1882, at 5 p. m., near Mulberry Grove.

No. 6. Water from "Little Bogue Falaya," taken from mill pond at Parre's mill, at 12 o'clock noon, July 29th, 1882. Stream swollen from heavy storm last night. Mr. Page says it is five feet higher than the ordinary stage.

No. 7. Surface water from recent showers taken from small branch running into Bogue Falaya, on east side, near Mulberry Grove Cottage, 2 o'clock p. m., July 29, 1882.

Physical properties.

243 Color.—With the exception of the samples marked respectively Nos. 2 and 4, the water was perfectly colorless. In the specimens indicated there was a very faint, scarcely perceptible, tinge of yellow; chemical analysis revealed the fact that this color was due to vegetable coloring matter. The amount of organic matter known was a mere trace, and appeared to be devoid from grasses and the leaves of trees. Nitrate of silver, oxalate of lime, and the baryta salts gave no deposit with any of those samples, showing that the coloration was due to a mere trace of the vegetable coloring matter.

Specific gravity.—The specific gravity of each and every specimen did not differ from that of distilled water, 1,000° at 60° F.

Deposit.—The specimens were free from any definite deposite; after standing for over 24 hours a number of minute flocculi fell to the bottom. Under the microscope these cloud-like flocks were found

244 to consist chiefly of the cells, spores, and thalli of fresh-water algæ of green and brown colors with a few small crystals of silicic acid. Algæ are found in all running streams, and without doubt their numbers are increased in the mass of the waters of a river by the agitation of heavy and prolonged showers. These green microscopical plants are characteristic of all collections of fresh water and were to a large extent developed after the collection of the samples. I attribute no deleterious properties whatever to these microscopic plants, which are found in even greater abundance in the rain water collected in our cisterns.

These samples of the Bogue Falaya, therefore, may be described as clear, transparent, and free from any distinct deposit or sediment, with a specific gravity similar to that of distilled water, with the general characteristics of rain water.

Chemical examination.

Careful testing with such reagents as the nitrate of silver, oxalate

245 of ammonia, and baryta salts revealed the absence of the sulphates and chlorides and the calcium compounds.

No more effect was produced upon these reagents than would have been caused by pure rain water collected in the country, where the atmosphere would have been free from the impurities characteristic of the atmosphere of large cities.

Upon evaporation in any small quantity, such as from two to four fluid ounces of the sample of water, no appreciable saline residue remained.

General conclusions.

From the preceding examination I regard the water of the Bogue Falaya as pure, uncontaminated by saline or organic matters to any appreciable extent, and as suitable for drinking, washing, and cooking, and also adapted to the use of boilers, and in all those manufactures, as paper and cloth, in which it is necessary to employ pure water free from sedimentary matters.

Effects of abundant rains.

246 It should be borne in mind that these samples of water were taken after and during the presence of frequent rains, and that the Bogue Falaya, like the Mississippi and other streams at this moment, *are* swollen to its greatest capacity.

The samples of water submitted to me for analysis by Gov. D. B. Penn were taken at a time —, at a somewhat lower stage of the river, and in this sample nitrate of silver and oxalate of ammonia produced only a slight cloudiness, whilst chloride of barium produced no deposit. This sample was free from organic matter, but contained traces of the chlorides and of the calcium compounds.

From this comparative examination we gather that the chemical composition of the Bogue Falaya water may vary within certain limits in accordance with the greater or lesser rainfall. The same remark applies also to the waters of the Mississippi river.

247 In the year 1869, at the request of Gen. Braxton Bragg, I examined, microscopically and chemically, the waters of the Mississippi and of the Bogue Falaya and Tangipahoa rivers and from the drove wells and cisterns and mineral wells of the city; even the various forms of ice, natural and artificial, consumed in New Orleans were included in the extended and exhaustive analysis. Only a fragment of this report was published, and I have never been able to recover my original manuscript. I would, however, respectfully refer your honor to the following extracts from this report, as embodying replies to one or more of your inquiries, and also as relating to subjects of great sanitary importance to the citizens of New Orleans.

At the time that this report was made Col. A. W. Bosworth (now of the board of health) was president of the city water works and Gen. Braxton Bragg was superintendent and chief engineer.

General conclusions.

248 1. The Mississippi river water varies in chemical composition within certain limits, in accordance with the temperature

and rainfall, but at all times, when freed from the usual deposit, it may be regarded as a wholesome drinking water.

2. For purposes of drinking, bathing, and manufacturing the Mississippi water should be freed from the heavy deposit, which varies in quantity at different stages in the main river and its tributaries.

3. The waters derived from the soil of New Orleans by means of wells are wholly unfit for drinking.

4. The cistern water of New Orleans is liable to contamination from many sources and varies in composition with the seasons.

5. The waters of the Bogue Falaya are pure, of stable composition, are not liable to contamination, and are free from sediment and require no filtration, and are, therefore, suitable for drinking, washing, and manufacturing.

With great respect and esteem, I have the honor to remain your obedient servant,

249 JOSEPH JONES, M. D.,
President Board of Health, State of Louisiana.

The report of the committee relative to the Bogue Falaya water, referred to in the foregoing depositions & offered in evidence, has already been transcribed, and will be found at page 178 of this transcript.

Continuance of Cause.

Extract from the Minutes. November Term, 1882.

NEW ORLEANS, THURSDAY, *March 1st*, 1883.

Court met pursuant to adjournment.
Present: Hon. Don. A. Pardee, circuit judge.

NEW ORLEANS WATER WORKS CO.
vs.
ST. TAMMANY WATER WORKS CO. *et al.* } No. 10031.

This cause came on for hearing—J. R. Beckwith, for complainant; counsel for defendant not appearing—when, on motion of said counsel for the complainant, the cause was continued to Monday, 2d April, 1883, at 11 a. m.

250 *Continuance of Cause.*

Extract from the Minutes of April 2d, 1883.

NEW ORLEANS WATER WORKS CO.
vs.
ST. TAMMANY WATER WORKS COMPANY *et al.* } No. 10031.

Owing to the illness of G. L. Hall, counsel for defendants, it was agreed that this cause stand over until Monday, the 9th instant, at 11 o'clock a. m.

Complainant's Note of Evidence. Entered & Filed April 9th, 1883.

U. S. Circuit Court, East. Dist. of La.

NEW ORLEANS WATER WORKS CO.
vs.
ST. TAMMANY WATER WORKS CO. *et al.* } No. 10031.

Note of evidence offered by the complainant on the hearing of the above-entitled cause.

Depositions of William S. De Van, Edward L. Bower, Joseph A. Shakspeare, and James D. Houston, taken before F. A. Woolfley, examiner.

Statutes of the State of Louisiana granting the charter to
251 the Commercial Bank of New Orleans.

Transfer of property, &c., by the Commercial Bank of New Orleans to the city of New Orleans, as per act, before Andrew Hero, Jr., notary public, January 19th, 1869.

Act of the Legislature of Louisiana incorporating the New Orleans Water Works Company.

Transfer of property by the city of New Orleans to the New Orleans Water Works Company, as per act, before G. Le Gardeur, Jr., city notary, April 9th, 1878.

Act of mortgage of the New Orleans Water Works Company to Adolph Schreiber, as per act, before James Fahey, notary public, April 1, 1879.

Minutes of the city council of July 12, 1882.

Proposed ordinance of the city of New Orleans relative to the St. Tammany Water Works Co.

Analysis of Bogue Falaya water.

Report of the committee relative to the Bogue Falaya water.

252 The documents referred to in the foregoing note of evidence have already been transcribed, and will be found as follows:

Transfer of property, &c., by the Commercial Bank of New Orleans to the city of New Orleans at page 128.

Transfer of property by the city of New Orleans to the New Orleans Water Works Company at page 77.

Act of mortgage of the New Orleans Water Works Company to Adolph Schreiber at page 153.

Minutes of city council of July 12th, 1882, at page 225.

Proposed ordinance of the city of New Orleans relative to St. Tammany Water Works Company at page 227.

Analysis of Bogue Falaya water at page 234.

Report of the committee relative to the Bogue Falaya water at page 178 of this transcript.

Note of Evidence Offered by the Defendant on the Hearing of this Cause. Entered & Filed April 9, 1883.

U. S. Circuit Court, Eastern District of Louisiana.

NEW ORLEANS WATER WORKS CO.
vs.
ST. TAMMANY WATER WORKS CO. *et al.* } No. 10031.

253 Note of evidence offered by defendants on the hearing of the above-entitled cause.

1. Act of Congress of U. S., 1880, granting right of way to the St. Tammany Water Works Company for laying pipes, etc., across Lake Pontchartrain between St. Tammany parish and the city of New Orleans.

2. Article 258 of the constitution of Louisiana, adopted July 23, 1879.

3. Act of Legislature of Louisiana under which the St. Tammany Water Works Company was organized.

Submission of Cause.

Extract from the Minutes of April 9th, 1883.

NEW ORLEANS WATER WORKS CO.
vs.
ST. TAMMANY WATER WORKS COMPANY *et al.* } No. 10031.

This cause came on to be heard at this term on the bill, answers, replications, and other proceedings in the cause—

Whereupon the complainants offered the following evidence in support of their bill, viz:

254 Depositions of Wm. S. De Van, Edward L. Bower, Joseph A. Shakspeare, and James D. Houston, taken before F. A. Woolfley, examiner.

Statutes of the State of Louisiana granting the charter to the Commercial Bank of New Orleans.

Transfer of property, &c., by the Commercial Bank of New Orleans to the city of New Orleans, as per act before Andrew Hero, Jr., notary public, January 19th, 1869.

Act of the Legislature of Louisiana incorporating the New Orleans Water Works Company.

Transfer of property by the city of New Orleans to the New Orleans Water Works Company, as per act before G. Le Gardeur, city notary, April 9th, 1878.

Act of mortgage of the New Orleans Water Works Company to Adolph Schreiber, as per act, before James Fahey, notary public, April 1st, 1879.

Minutes of the city council of July 12th, 1882.

Proposed ordinance of the city of New Orleans relative to the St. Tammany Water Works Company.

Analysis of Bogue Falaya water.

255 Report of the committee relative to the Bogue Falaya water.

And the defendant then offered the following evidence in support of their answers, to wit:

1. Act of the Congress of the U. S., 1880, granting right of way to the St. Tammany Water Works Company for laying pipes, etc., across Lake Pontchartrain between St. Tammany parish and the city of New Orleans.

2. Article 258 of the constitution of Louisiana, adopted July 23, 1879.

3. Act of Legislature of Louisiana under which the St. Tammany Water Works Company was organized.

And the cause was thereupon submitted on the record and proofs aforesaid by counsel for the respective parties without argument, and the court took time to consider.

256 *Decree. Entered & Filed April* 12, 1883.

U. S. Circuit Court, E. Dist. of La. In Equity.

NEW ORLEANS WATER WORKS CO.
vs.
ST. TAMMANY WATER WORKS COMPANY *et al.* } No. 10031.

This cause came on to be heard at this term on the bill, answer, replication, proofs, and exhibits on file, and was argued by counsel.

Upon consideration whereof it is ordered, adjudged, and decreed that the charter of the New Orleans Water Works Company is a valid executed contract binding upon the city of New Orleans, the State of Louisiana, and all other persons holding under either the said city or the said State; that the exclusive privilege therein granted for the term of fifty years to the said Water Works Company was and is a valid exercise of power on the part of the Legislature of the State of Louisiana; that said company having paid a valuable consideration for the said grant of ex-
257 clusive privilege, the same is the property of said company, of which it cannot be deprived except by due process of law; that article 258 of the constitution of the State of Louisiana of 1879, in so far as it attempts to lessen, impair, or destroy the said exclusive privilege, is in violation of the Constitution of the United States and is null, void, and of no effect or validity.

It is further ordered, adjudged, and decreed that the city of New Orleans is bound by the terms of the said charter, and is bound to obey and respect the terms of the said exclusive privilege, and that the said city has no power or right to grant any privileges or to pass any ordinances in contravention of the terms of the said charter.

It is further ordered, adjudged, and decreed that the pretentions and claims of the defendant corporation, known as the St. Tammany Water Works Company, are in contravention of the contract
258 rights of the said New Orleans Water Works Company.

And it is accordingly further ordered, adjudged, and decreed that a perpetual injunction do issue to the said St. Tammany Water

Works Company, its officers, agents, servants, and attorneys, restraining and inhibiting it and them from asserting, pretending, alleging, or publishing or holding out that they have acquired or can acquire under and by virtue of their said alleged charter any right, power, or privilege enabling them to bring into the city of New Orleans by conduits, pipes, or other devices the waters of the said Bogue Falaya river, or any stream or river or fountain; or to establish, set up, erect, or carry on, or threaten to establish, erect, or carry on, any system of public water works within the limits of the city of New Orleans to supply the said city or the inhabitants thereof with water; from laying down mains, pipes, or resorting to
259 any other means to establish and set up in the said city of New Orleans any system of water distribution or supply; from selling or offering to sell or supply any of the inhabitants of the said city with water for hire or otherwise during the entire period of the said fifty years from the said thirty-first day of March, anno Domini 1877, or from doing any other act or thing which can or will in any manner interfere with the rights of complainant in the premises.

It is further ordered, adjudged, and decreed that complainant do have and recover from defendant all costs in this proceeding to be taxed.

(Signed) DON. A. PARDEE,
Circuit Judge.

Writ of Injunction. Issued April 12th, 1883.

UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Judicial Circuit and Eastern District of Louisiana.

260 NEW ORLEANS WATER WORKS CO.
vs.
ST. TAMMANY WATER WORKS COMPANY *et al.* } No. 10031.

The President of the United States to the St. Tammany Water Works Company, Greeting:

Whereas it has been represented to us in our said circuit court on the part of the New Orleans Water Works Company in a bill in equity lately exhibited against you touching certain matters and things therein set forth:

Now, therefore, in consideration of the premises and of the allegations in said bill contained and of the final decree thereon, you, the said St. Tammany Water Works Company, your workmen, servants, agents, and attorneys, and each of you, are hereby commanded and strictly and perpetually enjoined, under the penalty of the law, that you absolutely refrain and desist from asserting, pretending, alleging, or publishing, or holding out that they
261 have acquired or can acquire, under and by virtue of their said alleged charter, any right, power, or privilege enabling them to bring into the city of New Orleans, by conduits, pipes, or

other devices, the waters of the said Bogue Falaya river, or any other stream or river or fountain, or to establish, erect, or carry on, or to threaten to establish, erect, or carry on, any system of public water works within the limits of the city of New Orleans to supply the said city or the inhabitants thereof with water; from laying down mains, pipes, or resorting to any other means to establish and set up in the said city of New Orleans any system of water distribution or supply; from selling, or offering to sell or supply, any of the inhabitants of the said city with water for hire, or otherwise, during the entire period of the said fifty years from the 31st day of March, A. D. 1877, or from doing any other act or thing which can or will in any manner interfere with the rights of complainant in
262 the premises.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of New Orleans, this 12th day of April, A. D. 1883.

[SEAL.] (Signed) T. V. COUPLAND,
D'y Clerk.

Marshal's Return.

Received April 23d, 1883, by the U. S. marshal, and on April 23d, 1883, I served a true copy of the within injunction on the St. Tammany Water Works Company, defendants herein, by handing the same to D. B. Penn, Esq., in person in the city of New Orleans, the president of the aforesaid company.

(Signed) J. R. G. PITKIN,
U. S. Marshal, East. Dist. of La.,
By E. S. CURRY,
D'y U. S. Marshal.

Affidavit of D. B. Penn. Filed June 7th, 1883.

263 United States Circuit Court for the Eastern District of Louisiana.

THE NEW ORLEANS WATER WORKS CO.
vs.
THE ST. TAMMANY WATER WORKS CO. *et al.* } No. 10031.

Davidson B. Penn, being duly sworn, deposes and says that he is vice-president of the St. Tammany Water Works Company; that he resides in the city of New Orleans; that he is acting as president of said St. Tammany Water Works Company; that there is at present no president of said company; that the amount in dispute in this cause is in excess of the sum of ten thousand dollars; that the injunction that has been made perpetual by the court herein enjoins the said company from carrying on any of its business, deprives it from exercising any functions, and stops all its business, thereby causing to it a loss upon business and investments therein in excess of said sum.

(Signed) D. B. PENN,
V. President.

264 Subscribed and sworn before me June 6th, 1888.
(Signed) F. A. WOOLFLEY,
Comm'r U. S. Circuit Court, Eastern District of Louisiana.

Motion & Order for Appeal. Entered & Filed June 7th, 1883.

U. S. Circuit Court, Eastern Dist. of Louisiana.

THE NEW ORLEANS WATER WORKS CO.
vs.
THE ST. TAMMANY WATER WORKS CO. *et al.* } No. 10031.

On motion of G. L. Hall & T. M. Gill, solicitors for the St. Tammany Water Works Co., one of the defendants herein, suggesting to the court that the said defendant has been aggrieved by the judgment rendered, entered, and filed against it on the 12th day of April, 1883, and that said defendant is desirous of appealing therefrom—

It is ordered that an appeal be granted to said defendant to the Hon. the Supreme Court of the United States, returnable on
265 the first day of the next term thereof, and the same to operate as a supersedeas upon mover furnishing bond in the sum of three hundred dollars.

Rule to Make City of New Orleans Join in Appeal. Entered & Filed June 7th, 1883.

United States Circuit Court for the Fifth Circuit and Eastern District of Louisiana.

NEW ORLEANS WATER WORKS CO.
vs.
ST. TAMMANY WATER WORKS COMPANY *et al.* } No. 10031.

On motion of G. L. Hall & T. M. Gill, solicitors for the St. Tammany Water Works Company, one of the defendants herein, and suggesting that said defendant has applied for and obtained an order granting an appeal to the United States Supreme Court, returnable on the first day of the next term of said court, and that the City of New Orleans is the other defendant in this cause,
266 it is ordered that the City of New Orleans show cause on Saturday, June 9th, 1883, at 11 a. m., why it should not join your mover in said appeal.

Marshal's Return.

Received June 7th, 1883, by the U. S. marshal, and on June 8th, '83, I served a true copy of the within motion on the City of New Orleans, through W. J. Behan, mayor, by leaving the same at his office, in the city hall, in the hands of C. L. Walker, the mayor's secretary, he being absent at the time of service.

June 8, '83.

(Signed) J. R. G. PITKIN,
U. S. Marshal, East. Dist. of La.,
By JOS. DEVONSHIRE,
D'y Marshal.

Order. Motion to Make City of New Orleans Join in Appeal Refused.

Extract from the Minutes. April Term, 1883.

NEW ORLEANS, SATURDAY, *June 9th*, 1883.

Court met pursuant to adjournment.
Present: Hon. Don A. Pardee, circuit judge.

267 NEW ORLEANS WATER WORKS CO. *vs.* ST. TAMMANY WATER WORKS COMPANY *et al.* } No. 10031.

This cause came on to be heard on the motion of the St. Tammany Water Works Company to make the City of New Orleans join in the appeal, and was argued by counsel. On consideration whereof, it is ordered that said motion be refused.

Answer to Rule & Joinder in Appeal by City of New Orleans. Filed June 9th, 1883.

United States Circuit Court for the Fifth Circuit and Eastern District of Louisiana.

NEW ORLEANS WATER WORKS COMPANY *vs.* ST. TAMMANY WATER WORKS CO. & CITY OF NEW ORLEANS. } No. 10031.

268 Now comes the City of New Orleans, one of the defendants herein, and in answer to the rule taken herein on the seventh of June, 1883, by the other and only codefendant, The St. Tammany Water Works Company, returnable this day, the ninth of June, 1883, to show cause why this said respondent, the City of New Orleans, should not join the other codefendant, The St. Tammany Water Works Company, in an appeal to the United States Supreme Court from the judgment rendered herein against both of said defendants on April 12th, 1883, by this honorable court, and alleges that it is advised and believes that it is seriously aggrieved by said judgment and is desirous of appealing therefrom to the honorable the Supreme Court of the United States and of joining in said appeal with the other codefendant.

Wherefore it prays to be allowed to join in said appeal by uniting with the said St. Tammany Water Works Company in giving bond in the amount of three hundred dollars, as heretofore ordered and fixed by this honorable court.

269 (Signed) C. F. BUCK,
City Att'y.

Order Allowing Appeal.

An appeal to the Supreme Court of the United States, returnable on the second Monday of October next, is allowed to the city of New Orleans jointly with its codefendant, The St. Tammany Water Works Company, upon furnishing bond with good and solvent

security, in the sum of three hundred dollars ($300.00), conditioned as the law directs.

New Orleans, June 9th, 1883.

(Signed) DON A. PARDEE, *Judge.*

Bond for Appeal. Filed June 9th, 1883.

UNITED STATES OF AMERICA:

Know all men by these presents that we, The Saint Tammany Water Works Company and the City of New Orleans, through W. J. Behan, mayor, principals, and R. E. Rivers, Charles
270 Le Sassier, and T. Fitzwilliam, sureties, are held and firmly bound, jointly and severally, unto the New Orleans Water Works Company in the sum of $300, three hundred dollars, lawful money of the United States of America, to be paid to the said New Orleans Water Works Company, its heirs, executors, administrators, and assigns; for which payment, well and truly to be made, we bind ourselves and each of us by himself, and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated the ninth day of June (1883), in the year of our Lord eighteen hundred and eighty-three.

Whereas the said St. Tammany Water Works Company having heretofore, to wit, on the seventh day of June, 1883, taken an appeal to the Supreme Court of the United States from and to reverse the decree rendered on the twelfth day of April, 1883, by the circuit court of the United States for the fifth circuit, holding sessions
271 in and for the eastern district of Louisiana, in the suit of the New Orleans Water Works Company *vs.* The St. Tammany Water Works Company and the City of New Orleans, No. 10031 of the docket:

Now, the condition of the above obligation is that if the above-bounden The St. Tammany Water Works Company and City of New Orleans shall prosecute *its* said appeal to effect and shall answer all damages and costs if *it* shall fail to make good *its* plea, then this obligation shall be void; otherwise to remain in full force and virtue.

(Signed) D. B. PENN, [SEAL.]
Vice-Pres't, Acting Pres't St. Tammany Water Works Company.
R. E. RIVERS. [SEAL.]
CHAS. LE SASSIER. [SEAL.]
T. FITZWILLIAM. [SEAL.]
W. J. BEHAN, *Mayor.* [SEAL.]

Signed, sealed, & delivered in the presence of witnesses, to wit:
(Signed) G. L. HALL.

Bond approved.
June 11, 1883.
272 (Signed) EDWARD C. BILLINGS, *Judge.*

UNITED STATES OF AMERICA, } *ss:*
District of Louisiana, }

Personally appeared Chas. Le Sassier [and] T. Fitzwilliam, who,

being duly sworn, depose and say that they are the sureties on the within bond; that they reside in the city of New Orleans, Louisiana, and are worth the full sum of three hundred dollars each over and above all of their debts and liabilities and property exempt from execution

Signed) CHAS. LE SASSIER.
T. FITZWILLIAM.

Subscribed & sworn before me this 9th day of June, 1883.
(Signed) EMMET D. CRAIG,
Comm'r U. S. Circuit Court, E. District of Louisiana.

273 UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

CLERK'S OFFICE.

I, Francis A. Woolfley, clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, do hereby certify that the foregoing 272 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial, in the case of The New Orleans Water Works Co. *vs.* The St. Tammany Water Works Co. *et als.*, No. 10031 of the docket of the said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 23d day of July, A. D. 1883.

Two (2) words interlined—approved.

[Seal U. S. Circuit Court for the 5th Circuit & Eastern District of La.]

F. A. WOOLFLEY, *Clerk.*

I, Don A. Pardee, United States judge for the eastern district of Louisiana, do certify that Francis A. Woolfley, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, was at the time of signing said certificate and is now the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand at the city of New Orleans, in said district, this 23d day of July, A. D. 1883.

Two (2) words interlined—approved.

DON A. PARDEE, *Judge.*

274 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States to the New Orleans Water Works Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the second Monday of October next pursuant to a motion and orders for an appeal filed in the clerk's office of the circuit

court of the United States for the fifth circuit and eastern district of Louisiana, wherein the St. Tammany Water Works Company and the city of New Orleans are appellants and you are appellee, to show cause, if any there be, why the decree rendered against the said appellants, as in said motion and orders for an appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 9th day of June, in the year of our Lord one thousand eight hundred and eighty-three.

DON A. PARDEE, *Judge.*

275 [Endorsed:] R. E. H. Farrar & J. R. Beckwith. United States circuit court, eastern district of Louisiana. No. 10031. New Orleans Water Works Co., appellee, *vs.* St. Tammany Water Works Co. *et al.*, appellants. Citation to appellee.

Marshal's Return.

Received June 11, 1883, by the U. S. marshal, and on June 11th, 1883, I served a true copy of the within citation of appeal on the New Orleans Water Works Company, appellees herein, by handing the same to E. H. Farrar, Esq., in person, in the city of New Orleans, E. H. Farrar & J. R. Beckwith, Esq'rs, being the attorneys of record for the within-named appellees.

J. R. G. PITKIN,
U. S. Marshal, Eastern Dist. of La.,
By DANA ROSE,
D'y U. S. Marshal.

Personally appeared before me, Dana Rose, a lawful deputy of J. R. G Pitkin, U. S. marshal for the eastern district of Louisiana, and makes oath that he served a true copy of the within citation of appeal on the appellees herein named, as set forth in his official return hereon.

DANA ROSE,
D'y U. S. Marshal.

Subscribed and sworn before me June 13th, 1883.

F. A. WOOLFLEY,
Commissioner United States Circuit Court,
Eastern District of Louisiana.

Endorsed on cover: E. Louisiana, C. C. U. S. No. 74. The St. Tammany Water Works Company and The City of New Orleans, appellants, *vs.* The New Orleans Water Works Company. Filed 1st October 1883.

120 to 4

Office Supreme Court U. S.
FILED.
OCT 27 1886
JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1886.

No. 74.

THE ST. TAMMANY WATER WORKS COMPANY

AND

THE CITY OF NEW ORLEANS, APPELLANTS,

versus

THE NEW ORLEANS WATER WORKS COMPANY.

Appeal from the Circuit Court of the United States for the Eastern District of Louisiana.

G. L. HALL,
Solicitor for the St. Tammany Water Works Company.

F. F. Hansell & Bro., Print, 28 & 30 Camp Street.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1886.

No. 74.

THE ST. TAMMANY WATER WORKS COMPANY

AND

THE CITY OF NEW ORLEANS, APPELLANTS,

versus

THE NEW ORLEANS WATER WORKS COMPANY.

Appeal from the Circuit Court of the United States for the Eastern District of Louisiana.

The complainant, the New Orleans Water Works Company, alleges, that by a charter granted it by the Legislature of Louisiana, it has the exclusive right to furnish the inhabitants of the City of New Orleans with water for fifty years from March 31, 1877, and that the Saint Tammany Water Works Company, recently organized, having obtained an ordinance from the Common Council of New Orleans permitting that Company to lay needed pipes and make all necessary constructions, is about to bring water into the City of New Orleans for

the use of the inhabitants, and prays that the Saint Tammany Water Works Company and the City of New Orleans be perpetually enjoined and restrained from doing anything that would interfere with the alleged rights of the complainant, because it would decrease its revenues and cause it damage.

Both defendants demurred and answered. The third ground of demurrer by the defendant Company was seriously contested, to-wit: That the bill contained no matter of equity whereon to sustain such writ of injunction. It is submitted that the demurrer is well founded, as the remedy of complainant was by a suit at law, coupled with an injunction, and that the parties litigant are all citizens of Louisiana.

The answer of the Saint Tammany Water Works Company distinctly alleges that it has and does question the right and power of the Legislature of the State of Louisiana to grant the exclusive right to the New Orleans Water Works Company to furnish all the water to the people of New Orleans, and further, that the Constitution of Louisiana, Article 258, abolished the monopoly feature of the charter of New Orleans Water Works Company.

These are substantially the averments of the two Water Works Companies.

The demurrer was overruled, and the decree of the Circuit Court granted all that was asked in the prayer of complainants' Bill of Complaint. The St. Tammany Water Works Company appealed and the City of New Orleans joined in the appeal.

The New Orleans Water Works Company obtains its supply of water from the great drainage system of the United States, the Mississippi River, near its mouth, and has money invested in works. The City of New Orleans has no wells and can have none from its alluvial location. The many changes in the ownership of that Company's rights and franchises show that the people of New Orleans will not use such water freely, and even in that hot climate the Water Works Company, with such water for a supply, evidently did not thrive. It was deemed best, therefore, to get a monopoly of the water supply for the future, and so that Company got a charter from the Legislature of Louisiana, granting it the exclusive right to furnish every drop of water that the inhabitants of the City of New Orleans desired or were forced to use. They must take this most undesirable water or none.

The Saint Tammany Water Works Company was organized to get water from the Bogue Falaya River, a stream suddenly formed by springs in the Pine Hills of St. Tammany Parish not far from New Orleans. It is the clearest and purest of water and would be a great factor in the development of New Orleans, in the marshy location of that city. The name Bogue Falaya signifies Short Creek, because it is so short and suddenly formed. The quality and supply of the water from that stream is shown by the analysis of that eminent chemist, Dr. Joseph Jones, and the report of the committee appointed by the Common Council of New Orleans to investigate it.

Good water is as necessary as good air to human life. Both should be beyond the reach of any monopoly supply, by judicial decree. It would do violence to the good sense of the Court to dwell upon the benefits to be derived by the 250,000 inhabitants of the City of New Orleans from an abundant supply of excellent water; situtated as it is on very low land of wide extent in a climate of great heat during most of the year. Those benefits are most apparent, and appeal to every sense of justice, propriety and reason for their extension.

Art. 258 of the Constitution of Louisiana of 1879, is: "All rights, actions, prosecutions, claims and contracts, as well of individual as of bodies corporate, and all laws in force at the time of the adoption of this Constitution, and not inconsistent therewith, shall continue as if the said Constitution had not been adopted.

"*But the monopoly features in the charter of any corporation now existing in the State, save such as may be contained in the charters of railroad companies, are hereby repealed.*"

Under that Constitution, can there be any monopoly to supply the citizens of New Orleans with water, air or bread, if any corporation holding its existence and charter by legislative act, with such monopoly feature, has a date prior to the adoption of the Constitution of 1879? Can the Legislature of Louisiana so bind the State of Louisiana as to prevent its people by an exercise of sovereign power through a convention of

its people, duly convened, from adopting a constitution and form of government? If it can so bind the State for fifty years, it can bind it for more—or practically forever. If it can so bind the State, there is no computing the ruin that law makes, or injury that venal legislation would fasten on a people by legislative monopolies.

Rich in its exclusive right and reveling in the monopoly of supplying all the water used by the people of that large city, the complainant is quite content. To every demand or appeal it answers, my right is the "even pound of flesh." Claiming all by virtue of a charter granted by the Legislature of Louisiana, it invokes, through a citizen of that same State, as is the defendant, the aid of the United States to uphold its monopoly.

The case of the Butchers' Union Slaughter House and Live Stock Landing Company vs. the Crescent City Live Stock Landing and Slaughter House Company, 111 U. S. Reports, p. 746, clearly supports the position of the St. Tammany Water Works Company before the Court. On p. 749 is this language:

"No one can examine the provisions of the Act of 1869, with the knowledge that they were accepted by the Crescent City Company and so far acted on that a very large amount of money was expended on a vast slaughter house and an equally extensive stock yard and landing place, and hesitate to pronounce that in form they have all the elements of a contract on sufficient consideration."

It admits of as little doubt, that the Ordinance of the City of New Orleans, under the New Constitution, impaired the supposed obligation imposed by those provisions on the State, by taking away the exclusive right of the Company granted to it for twenty-five years, which was to the Company the most valuable thing supposed to be secured to it by the statutory contract." * * * * *

"It cannot be permitted that, when when the Constitution of a State, the fundamental law of the land, has imposed upon its Legislature the duty of guarding by suitable laws, the health of its citizens, especially in crowded cities, and the protection of their persons and property, by suppressing and preventing crime, that the power which enables it to perform this duty, *can be sold, bargained away, under any circumstances, as if it were a mere privilege which the legislator could dispose of at its pleasure.*"

"The principle has been asserted and repeated in this Court in the last few years in no ambiguous terms."

The Court then quotes the following cases: Stone vs. Mississippi, 101 U. S. 814; The Beer Co. vs. Massachusetts, 97 U. S. 25, 28; Fertilizing Co. vs. Hyde Park, 97 U. S. 659; Boyd vs. Alabama, 94 U. S. 645; Moon vs. The State, 48 Miss. 147; Metropolitan Board of Excise vs. Barrie, 34 N. Y. 657–663; The Spring Valley Water Works vs. Schottler, 110 U. S. 348.

The slaughtering of animals for food was the subject under discussion in that case. Is it of greater

concern to the public health than the supply of good wholesome water? Which is the greater monopoly?

This litigation is between citizens of Louisiana, who framed the Constitution of Louisiana of 1879. What the Louisiana Courts have decreed on the subject may be seen in 35 Louisiana Annual Reports, page 1111, New Orleans Water Works Co. vs. Louisiana Sugar Refinery Co. and City of New Orleans, now on writ of error to this Court. There are many other suits against the New Orleans Water Works Co.—a whirlwind of litigation—for the legal and citizens' war with this monopoly is earnest. It is a struggle for public health, public welfare, police power, against a water monopoly.

In 111 U. S. p. 766, this Court says: "Monopolies are the bane of our body politic at the present day. In the eager pursuit of gain they are sought in every direction. They exhibit themselves in the stock market and produce market, and in many other ways."

During the October Term of 1885, there were three decisions by this Honorable Court that have attracted much attention, viz: The New Orleans Gas Light Company vs. The Louisiana Light and Heat Producing and Manufacturing Co. et al., No. 18. The New Orleans Water Works Co. vs. Robert E. Rivers, No. 539; and the Louisville Gas Co. vs. Citizens' Gas Light Co., No. 489.

Does the doctrine there announced apply to this case? These cases are fresh in the mind of the Court; and asking the Court to consider the flood of ills that

will follow, with no good, if a great monopoly can be continued over a large city of its water supply for forty-one more years, under complainant's showing, we forbear comment thereon.

The complainant claims its rights. If it has asked for and had benefits by obtaining legislation from the Legislature of Louisiana, convened under the Constitution of Louisiana of 1879, it accepts that Constitution and accepts all its Articles, including the Art. 258, which abolishes its monopoly. *This has been* done by the New Orleans Water Works Company. The legislation was, since this cause was tried in the Circuit Court, so the Act of the Louisiana Legislature could not be offered in evidence. It is Act No. 56 of 1884, of the General Assembly of Louisiana and Ordinance No. 909 of the Council Series of the City of New Orleans.

This condition of affairs is brought to the attention of the Court by a petition containing all those Acts in which relief is asked at the hands of the Court. See authorities quoted in the petition.

The attention of counsel has been called to a case now pending before the United States Circuit for the Eastern District of Louisiana against the New Orleans Water Works Company, in which the plea, that the New Orleans Water Works Company has obtained beneficial legislation from the Legislature of Louisiana, convened under the Constitution of that State of 1879, is made, and the act of the Legislature and ordinance above quoted are made a part of the plea, with the view of ridding that city of the water monopoly. Should

the Court affirm the decree of the Circuit Court against the St. Tammany Water Works Company and the City of New Orleans, and perpetuate the injunction against them, and in the cause yet to come before this Court upon the aforesaid plea of benefits obtained under the very Constitution of 1879, the monopoly feature of the New Orleans Water Works Company be decreed to be abolished, the St. Tammany Water Works Company would be under the ban of perpetual injunction. In considering this matter, the Court will further the ends of justice and equity by granting leave to defendant to supply this statutory evidence, or to remand the cause for that purpose, if deemed necessary.

Respectfully submitted,

G. L. HALL,

Solicitor for the St. Tammany Water Works Company.

120-64

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1886.

No. 74.

THE ST. TAMMANY WATER WORKS COMPANY

AND

THE CITY OF NEW ORLEANS, APPELLANTS,

versus

THE NEW ORLEANS WATER WORKS COMPANY.

Appeal from the Circuit Court of the United States for the Eastern District of Louisiana.

SUPPLEMENTAL BRIEF.

The New Orleans Water Works Company, to sustain its Bill of Complaint, relies upon the exclusive right to supply the inhabitants of the City of New Orleans with water, granted it by the charter given it by the General Assembly of the State of Louisiana in 1877, under the Constitution of the State then existing.

Averring that the defendants, appellants, claim that

this monopoly, this exclusive right, has been abolished by the Constitution of Louisiana of 1879, Article 258, it prays, in effect, a judicial decree that will perpetually enjoin and restrain the St. Tammany Water Works Company and the City of New Orleans from supplying any water to the said people, on the ground that the Constitution of Louisiana, Article 258, impairs the obligation of its contract, given by its legislative charter.

Since this cause was tried in the Circuit Court, and since this appeal has been taken, the New Orleans Water Works Co. has applied for and obtained most beneficial legislation from the General Assembly of the State of Louisiana, convened under the Constitution of Louisiana of 1879, and entered into a contract with the City of New Orleans, relative to supplying the citizens of that city with water, and to be relieved from serious taxation. Certified copies thereof are filed herewith, viz: The Constitution of the State of Louisiana of 1879, Articles 48, 234, 248 and 258. The Act of the General Assembly of the State of Louisiana, No. 56 of 1884, approved July 7, 1884. Ordinance No. 909, Council Series, City of New Orleans, approved September 26, 1884, and the contract between the City of New Orleans and the New Orleans Water Works Co., made October 3, 1884.

It seems to be the settled jurisprudence that this Court will take judicial notice of the Public Acts of the General Assemblies of the various States of the United States. 114 U. S. 218, Lamar vs. Micou; 9

Peters, 607, Owings vs. Hull; 12 Wall. 227, Railroad Co. vs. Bank of Ashland; 8 Wall. 513, Carpenter vs. Dexter; 2d Black, 519, Griffin vs. Gibbs; 4 Dal. 22, Coursers vs. Steed; 101 U. S. 562, Shaw vs. Railroad; 2 How. 227, Carrington Drawbridge Co. vs. Shepherd; 16 How. 65, Pennington vs. Gibson.

The New Orleans Water Works Co., by seeking, obtaining and accepting beneficial legislation from the General Assembly of the State of Louisiana of 1884, convened under the Constitution of that State of 1879, accepted that Constitution in all its parts, which Constitution, Art. 258, abolishes its monopoly rights. It sought this legislation, for it gave the public notice required by Art. 48; signed the contract with the City of New Orleans; obtained the passage of the ordinance by the Common Council of the City of New Orleans, to carry into effect the Act of the General Assembly of the State of Louisiana of 1884, No. 56, which sets forth this notice. It is a legal presumption, that a grantee sought and obtained special beneficial legislation, but here we have the admission and proof of it in the Act of the General Assembly of Louisiana, the public notice set forth therein, and the signature to the contract which it signed.

Art. 234 of the Constitution of Louisiana of 1879 is: "The General Assembly shall not remit the forfeiture of the charter of any corporation now existing, nor renew, alter or amend the same, nor pass any general or special law for the benefit of such corporation except upon the condition that such corporation shall

thereafter hold its charter subject to the provisions of this Constitution." The engagement of the New Orleans Water Works Co. in said contract, the ordinance and the Act of the General Assembly of Louisiana fix its acceptance of the Constitution of Louisiana of 1879, and abolish its exclusive rights. 95 U. S. 319, Shields vs. Ohio; 109 Mass. Parker vs. R. R. Co.; 6 Wall. 423; 26 Ohio St. 86; 66 Maine 488; 96 U. S.; 499; 37 N. J. Law, 228; 18 N. J. Eq. 192; Mir. on Corporations, Sec. 1097.

The brief heretofore filed herein covers other grounds.

If the Court should consider that the effect of the Act of the Legislature of Louisiana, No. 56 of 1884, and of the contract and ordinance of the city of New Orleans, cannot be determined in the present condition of this litigation, then, and only then, its consideration of the petition on file, to supply the statutory evidence, is urged.

That order for further proof to be granted in such cases seems to be provided for by Rule 12 of this Court.

Respectfully submitted,

G. L. HALL,

Solicitor for the St. Tammany Water Works Co.

120-Cal

SUPREME COURT OF UNITED STATES.

OCTOBER TERM, 1886.

No. 74.

THE ST. TAMMANY WATER WORKS COMPANY, AND THE CITY OF NEW ORLEANS, APPELLANTS,

versus

THE NEW ORLEANS WATER WORKS COMPANY, APPELLEE.

Appeal from the Circuit Court of the United States for the Eastern District of Louisiana.

APPELLEE'S BRIEF.

J. R. BECKWITH,
E. H. FARRAR,
Counsel for Appellee.

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SUPREME COURT OF UNITED STATES.

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versus

THE NEW ORLEANS WATER WORKS COMPANY, APPELLEE.

Appeal from the Circuit Court of the United States for the Eastern District of Louisiana.

APPELLEE'S BRIEF.

The facts in this case are substantially the same as in Water Works vs. Rivers, 115 U. S. 674, decided at the last term of the Court.

The only substantial difference being that in Water Works vs. Rivers, Rivers, a hotel-keeper, sought to invade the exclusive right of the New Orleans Water Works Company by laying a pipe to the Mississippi River, while the appellant company in this case organized under the general law of the State, and attempted to construct and operate a rival system of water works for the supply of the City of New Orleans, in competition with the appellee.

STATEMENT OF FACTS.

The bill was filed July 24th, 1882, against the St. Tammany Water Works Company, and the city of New Orleans, and was instituted to settle a dispute concerning the extent of the rights secured to the complainant and appellant, in its charter as granted by special act of the Legislature of Louisiana, approved March 31st, and amended February 26th, 1878.

By an act approved April 1st, 1833 (session laws 1833, 151), the Legislature of Louisiana chartered a corporation called "The Commercial Bank of New Orleans." At that time it was the settled policy of the State to attach, as a condition, to all charters of banking institutions the construction of some work by internal improvement or public utility. In conferring on The Commercial Bank banking privileges, with a capital stock of three millions, the Legislature attached to the franchise a condition declared to be "the object of the charter," requiring the corporation to furnish the city of New Orleans with water supply to be taken from the Mississippi river, distributed through the city for public use and for the use of inhabitants, by a properly constructed system of mains, pipes and conduits.

The right to establish and to carry on the system of water works was to continue vested in the corporation "forever," with a proviso, however, "that at any time after the expiration "of thirty-five years from the passage of this act, it shall be law- "ful for the authorities of the city of New Orleans to purchase "from the Commercial Bank of New Orleans, the water works "constructed by said company in virtue of this act, and said "company shall not refuse to sell the works aforesaid, with all "of the rights and appurtenances pertaining to the same, on the "terms hereinafter provided."

The terms upon which the city could, at its election, purchase the waterworks rererred to in the above proviso, are contained in the 42d section of the charter.

Appraisers were to be appointed to fix the value of the

works and price to be paid, and when ascertained, the price to be paid the bank was to be paid in five per cent. bonds of the city, redeemable not less than ten nor more than forty years from the day when the price was fixed by written report of the arbitrators. When the bonds were executed and delivered, the bank was required to deliver the works to the city.

The city was given the election, if exercised within thirty days from the first opening of books for subscription to capital stock, to subscribe for five thousand shares of the capital stock and pay for the stock with municipal bonds, redeemable in forty years.

The city elected to subscribe for the five thousand shares and issued its bonds in payment. In the event of subscription by the city certain rights and representation in the Board of Directors, etc., were to follow the subscription. So much of the act of 1833, as it is necessary to consider, is printed in the appendix to this argument.

At the expiration of the term of five years from the adoption of the act and charter, the city of New Orleans elected to purchase the water works. An appraisement of the interest of the shareholders in the Commercial Bank, other than the shares held by the city, was had and fixed at one million three hundred and ninety-three thousand four hundred dollars ($1,393,400). The bonds of the city of the character and description authorized by the bank charter, were issued by the city and delivered to the bank. The Commercial Bank transferred to the city full title to the water works by due form of conveyance, giving by effect of the statute full and exclusive right to carry on the works and receive the profits in the language of the act "forever" to the city.

The city continued to operate the works from 1868, the termination of the period of thirty-five years, until February, 1878.

During this period of ownership the financial affairs and condition of the city gravitated from extremely bad to superlatively worse. It was accumulating debt from annually increas-

ing expenses of administration beyond its annual revenues from taxation and other sources. It was unable to pay the interest on the bonds issued to pay for the water works or discharge or diminish its constantly increasing floating debt not funded, or meet the principal of maturing bonds.

In 1877, the Legislature came to the rescue of the city and passed an act entitled "*an act to enable the city of New Orleans to promote the public health and afford greater security against fire, by the establishment of a corporation to be called the New Orleans Water Works Company, to authorize the said Company to issue bonds for the purpose of extending and improving the said works, and to furnish the inhabitants of the city of New Orleans with an adequate supply of pure and wholesome water, and to permit the holders of Water Works bonds to convert them into stock and provide for the liquidation of the bonded and floating debt of the city of New Orleans.*" approved March 31, 1877, being Act No. 33 of the extra session of 1877; (this act is printed *in extenso*, in the appendix).

This act of 1877, provided for the incorporation of the New Orleans Water Works Company, with a capital stock of two million dollars. The par value of the stock subscribed for by the city of New Orleans in the Commercial Bank of New Orleans, and paid for by its bonds issued in 1833, was six hundred and six thousand and six hundred dollars. These bonds had matured and been refunded. The act required the company created by the act to issue to the city of New Orleans $606,600 in stock, full paid, not subject to assessment. And the further amount of stock, one share of one hundred dollars for every one hundred dollars of Water Works bonds which the city had paid or redeemed of the bonds issued to pay the price of the interest owned by the Commercial Bank, when the city elected to purchase the Water Works at the end of the thirty-five years term.

The second section of the charter provides:

"That immediately after the organization of the said Water Works Company, as hereinafter provided, it shall be required to

issue to the city of New Orleans, stock to the amount of six hundred and six thousand six hundred dollars, as full paid, and not subject to assessment; and in addition thereto, one similar share for every one hundred dollars of Water Works bonds which said city may have taken up heretofore and extinguished by payment, exchange or otherwise; and that the residue of said capital stock shall be reserved for the benefit of all holders of Water Works bonds, to the extent of the amount now outstanding, who may elect to avail themselves of the provisions of this act; and the said Water Works Company shall issue to the said city of New Orleans, to be exchanged with the holders of said bonds, one share of full paid stock not subject to assessment, for each and every one hundred dollars of said Water Works bonds; and the said bonds, as fast as surrendered and exchanged for stock as aforesaid, be cancelled; that for the purpose of effecting said exchange of outstanding Water Works bonds for stock, as aforesaid, the city of New Orleans shall be entitled to all the certificates for the shares of said stock of said New Orleans Water Works Company, and shall, by advertisement for six months in two newspapers in the city of New Orleans and two newspapers in the city of New York, give notice that it will exchange said stock at par for said Water Works bonds at par, exclusive of the overdue coupons attached to said bonds, which shall constitute a separate demand against said city, and in case any of the said bondholders shall fail or refuse to avail themselves of this act within one year from the formation of said company, the said city of New Orleans shall not thereafter be required to make said exchange, but may retain the unused shares of stock for its own account and benefit, unless it shall prefer to continue to take up any of said outstanding bonds by exchange as aforesaid."

Section 3 of the charter enacts, "That the said Water Works Company shall be organized by the Mayor of the city, giving thirty days' notice that he will receive subscriptions of bondholders who may agree to exchange their bonds for stock as aforesaid; and the said city shall at once subscribe for stock to the amount of six hundred and six thousand six hundred dollars, and such further amount as shall equal the par value of any of said Water Works bonds, which shall have been extinguished by said city; and as soon as, in addition to the subscription of said city, there shall be subscribers for an exchange of said bonds for stock to the extent of five hundred thousand dollars, and the said amount of bonds shall have been actually surrendered to and cancelled by the Administrator of Finance the said subscribers shall assemble together, on a day to be named by the Mayor, and shall elect a board of directors, to consist of seven persons, four of whom shall be designated by the Mayor, and the remaining three shall be elected by said subscribers, other than said city, from amongst themselves; and the persons thus designated and elected shall constitute the first

proved by the city—the proceeds to be used *only* for the improvement of the works and to increase water supply.

The Water Works Company was organized under this charter, a corporation whose whole capital stock is paid up in surrendered obligations of the city. Not one dollar of cash came to its treasury from stock subscription. Its obligation to repair and extend its works could only be carried out by effecting a loan on its mortgage bonds. In the first stage of its existence, the city demanded and received six hundred and six thousand six hundred dollars of the capital stock in lieu of Water Works bonds issued to the Commercial Bank for the purchase of the works in 1868, and retired either by payment or refunding, with a right not only to full equal dividends on the stock, but to the appointment of *four* of the seven directors in the first stage or period of the corporate existence of the new company, and *three* of the seven directors afterwards.

By the terms of the charter, it is in the power of the city to divest itself of every share of its stock by exchange for the bonded or floating debt of the city, and yet hold its three directors in the board, after it has ceased to own a single share of stock.

The scheme was a device to dispose of the plant of the existing water works as acquired from the Commercial Bank, together with the exclusive right to carry on the works for fifty years in exchange for a portion of the debt of a practically bankrupt city—"a new way to pay old debts."

The only possible consideration which could induce a holder of the bonds of the city to surrender and exchange his interest paying bond for a certificate of stock, was the exclusive feature of the grant in the charter.

The only reservation or exception to the exclusive right for fifty years is contained in the 18th section of the charter:

"SEC. 18. *Be it further enacted, etc.*, That nothing in this act shall be so construed as to prevent the City Council from granting to any person or persons, contiguous to the river, the

privilege of laying pipes to the river, exclusively for his own or their own use."

By an act, approved February 26th, 1878, the charter was so amended as to take away the right of the city to vote its stock at election of directors, but the charter was not otherwise changed in any manner material to any question involved in this cause. (The amendatory act is given in full in the appendix.)

The bill sets forth directly and by reference to the charter, all of the above features of the charter; avers that the city of New Orleans accepted and availed itself of the legislation to discharge a large portion of its debt. That at the time the city was overburdened with both bonded and floating debt. That the city subscribed for the amount of the capital stock of said Water Works Company, equal to the amount of Water Works bonds paid or extinguished by refunding by the city, by exchange for other bonds amounting to $606,600. That the subscribers to said stock other than the city of New Orleans, acquired their stock full paid by the surrender to the city of the bonds of the city, to the amount of the par value of the stock, dollar for dollar, on or about the tenth day of March, 1878, and that the city of New Orleans, acting under the authority of this legislation, took the proceedings and performed the acts necessary to complete the organization of said corporation. That during the month of March, 1878, this organization was completed, and the Water Works Company, as a company, accepted the terms and conditions of the charter, accepting the shares of Water Works stock in full payment of the debt surrendered; that, as provided in the charter, by direction of the legislative branch of the city government, the Mayor of the city made full and complete transfer of all the property in the Water Works, held and owned by the city, over to the Water Works Company (a copy of the act of transfer is in the record, page 18), with full warranty having all of the effect and legal import of warranty in such cases as established by the laws of Louisiana.

Board of Directors, and shall continue in office until the first of July, eighteen hundred and seventy-eight, and the said board shall elect one of their number as President."

The charter further provides in section 4, "That as soon after the election of said Board of Directors as the City Council may determine, the Mayor of the city shall transfer by notarial act, to said New Orleans Water Works Company, the water works and all the property appurtenant thereto."

SEC. 5. *Be it further enacted, etc.*, That the said Water Works Company shall own and possess the privileges acquired by the city of New Orleans from the Commercial Bank; that it shall have for fifty years from the passage of this act the exclusive privilege of supplying the city of New Orleans and its inhabitants with water from the Mississippi river, or any other stream or river, by means of pipes and conduits, and for erecting and constructing any necessary works or engines, or machines for that purpose; that it may contract for, purchase or lease any land or lots of ground, or the right to pass over and enter the same from time to time as occasion may require, through which it may be necessary to convey the water into said city; or to distribute the same to the inhabitants of said city; and to construct, dig or cause to be opened, any canals or trenches whatsoever, for the conducting of the water of the rivers from any place or places it may deem fit, and to raise and construct such dykes, mounds, reservoirs, as may be required for securing and carrying a full supply of pure water to said city and its inhabitants; to enter upon and survey such lands as it may think proper in order to ascertain the best mode of furnishing a supply of water; to lay and place any number of conduits or pipes, or aqueducts, and to cleanse and repair the same, through or over any of the lands or streets of the city of New Orleans; *provided*, the same shall not be an obstruction to commerce or free circulation; and also to have and use a common seal and alter the same at pleasure; to ordain and establish by-laws for its government and that of its officers and employes, not repugnant to this act and the Constitution of the State and of the United States, or the ordinances of the city of New Orleans.

On the first Monday in July, 1878, and annually thereafter the holders of stock other than the city of New Orleans, were to meet and elect four directors. The Mayor and two other officers of the city were to be *ex-officio* directors.

The city was given the right to cast one vote for each share of stock owned by the city "at the election of directors and at all meetings of said stockholders, in the same manner as other stockholders."

The stock held by the city is made exempt from seizure for debts due by the city. In section fourteen of the charter the city is given authority to apply the stock given to the city, to the reduction of the bonded or floating debt of the city, upon such terms as the city might agree with its creditors holding the bonds or evidences of debt, with the proviso that the stock shall in no case be sold for less than par value, and that when sold, to be paid for in evidence of debt of the city, must be sold on stated proposals at the most advantageous rate, after due advertisement, with reserved right on the city to reject all bids.

In consideration for exemption from State, municipal and parochial taxation, the Water Works Company is to provide, free of charge, water for extinguishment of fires, cleansing gutters, for public buildings, etc. The Water Works Company is given the right to fix the tariff of charges for water furnished consumers, but is prohibited from continuing a tariff which will yield a dividend exceeding ten per cent. per annum from profits; the city to retain supervision in that respect, and require a reduction of tariff, in case profits exceed ten per cent.

By section 13 of the charter, the corporation is required to erect new works, pipes and mains; the work to be commenced before the expiration of one year, and to be completed within five. If not completed in the stipulated time, the exclusive privilege is to be forfeited.

The only source of funds to carry on and complete the enlargement and improvements required are: 1st. The revenues from the sale of water. 2d. Cash stock (of no avail as long as the city debt is exchangeable for stock). 3d. The issue of mortgage bonds authorized by section 7 of the charter. By this section the Company to obtain the funds necessary to extend and improve the works, is authorized, with the consent of the city, first obtained, to issue three million dollars of bonds, secured by mortgage on the entire works, but after the bonds are executed, no bond can be sold without the terms of sale are ap-

proved by the city—the proceeds to be used *only* for the improvement of the works and to increase water supply.

The Water Works Company was organized under this charter, a corporation whose whole capital stock is paid up in surrendered obligations of the city. Not one dollar of cash came to its treasury from stock subscription. Its obligation to repair and extend its works could only be carried out by effecting a loan on its mortgage bonds. In the first stage of its existence, the city demanded and received six hundred and six thousand six hundred dollars of the capital stock in lieu of Water Works bonds issued to the Commercial Bank for the purchase of the works in 1868, and retired either by payment or refunding, with a right not only to full equal dividends on the stock, but to the appointment of *four* of the seven directors in the first stage or period of the corporate existence of the new company, and *three* of the seven directors afterwards.

By the terms of the charter, it is in the power of the city to divest itself of every share of its stock by exchange for the bonded or floating debt of the city, and yet hold its three directors in the board, after it has ceased to own a single share of stock.

The scheme was a device to dispose of the plant of the existing water works as acquired from the Commercial Bank, together with the exclusive right to carry on the works for fifty years in exchange for a portion of the debt of a practically bankrupt city—"a new way to pay old debts."

The only possible consideration which could induce a holder of the bonds of the city to surrender and exchange his interest paying bond for a certificate of stock, was the exclusive feature of the grant in the charter.

The only reservation or exception to the exclusive right for fifty years is contained in the 18th section of the charter:

"SEC. 18. *Be it further enacted, etc.*, That nothing in this act shall be so construed as to prevent the City Council from granting to any person or persons, contiguous to the river, the

privilege of laying pipes to the river, exclusively for his own or their own use."

By an act, approved February 26th, 1878, the charter was so amended as to take away the right of the city to vote its stock at election of directors, but the charter was not otherwise changed in any manner material to any question involved in this cause. (The amendatory act is given in full in the appendix.)

The bill sets forth directly and by reference to the charter, all of the above features of the charter; avers that the city of New Orleans accepted and availed itself of the legislation to discharge a large portion of its debt. That at the time the city was overburdened with both bonded and floating debt. That the city subscribed for the amount of the capital stock of said Water Works Company, equal to the amount of Water Works bonds paid or extinguished by refunding by the city, by exchange for other bonds amounting to $606,600. That the subscribers to said stock other than the city of New Orleans, acquired their stock full paid by the surrender to the city of the bonds of the city, to the amount of the par value of the stock, dollar for dollar, on or about the tenth day of March, 1878, and that the city of New Orleans, acting under the authority of this legislation, took the proceedings and performed the acts necessary to complete the organization of said corporation. That during the month of March, 1878, this organization was completed, and the Water Works Company, as a company, accepted the terms and conditions of the charter, accepting the shares of Water Works stock in full payment of the debt surrendered; that, as provided in the charter, by direction of the legislative branch of the city government, the Mayor of the city made full and complete transfer of all the property in the Water Works, held and owned by the city, over to the Water Works Company (a copy of the act of transfer is in the record, page 18), with full warranty having all of the effect and legal import of warranty in such cases as established by the laws of Louisiana.

That the Company accepted the transfer and assumed all of the obligations contained in the charter; that amongst the obligation assumed, was the obligation to extend and improve the works and machinery, as required by the charter; that by the terms of the charter the Company was without funds, its capital stock being in part a donation to the city of $606,600 in full paid stock, and all of the other shares representing the same nominal value of city obligations surrendered and cancelled before delivery of certificates of stock to the subscribers.

That in order to obtain the funds to extend the works the Water Works Company was compelled to avail itself of the authority to mortgage its works and franchises; that with the assent of the city, as required by the charter, the Company issued five hundred thousand dollars in mortgage bonds, secured by mortgage of said property and franchise; that all of said bonds were sold and disposed of to third persons, on terms consented to by the city, and are now out and unpaid.

That the Company would have been unable to place the bonds or dispose of them, or borrow money, nor would the shareholders in said Company have exchanged their obligations of the city for shares of stock in the Company, had not they and the public firmly believed that amongst the rights granted and exchanged for said surrendered evidences of debt of the city was an exclusive right to furnish the water supply for the city and its inhabitants for the period of fifty years, and that there would be no fraudulent attempt either on the part of the State or city, to impair or defeat the grant for the full term of fifty years, as granted.

That the grant of property in the Water Works, burdened with the obligation to improve and extend the works, as required by the charter, without the exclusive privilege for fifty years, is not equal to the value of the evidences of debt surrendered in exchange, but is comparatively worthless.

That the city observed good faith and did not attempt to in-

terfere with the right of the Company, as granted, until after the adoption of a new constitution of Louisiana in 1879.

That the city of New Orleans construes the 258th article of the Constitution of 1879, which, after saving right of action etc., contains the following proviso: "*But the monopoly features in the charter of any corporation now existing in this State, save such as may be contained in charters of railroad companies, are hereby abolished,*" not only as having destroyed the exclusive privileges of the Water Works Company, but as relieving it of all of the obligations of common honesty and its written and sealed warranty in its deed of conveyance to the Company; and further, that under this section of this constitutional proviso, the city had acquired the legal right to confiscate the stock in the hands of the shareholders, notwithstanding the fact that every dollar in the shares represents a dollar of city indebtedness absolutely paid and extinguished by the shareholders.

That immediately after the adoption of the Constitution of 1879, the city commenced an attack upon the Water Works Company by granting rights to persons not owning property contiguous to the Mississippi river, to lay down pipes, and provide water supply to the exclusion of the Water Works Company.

That the defendant, the St. Tammany Water Works Company, was a combination of men organized as a corporation under the general laws of the State, and that all of the steps necessary to create a corporation had been taken. A copy of their charter is made an exhibit to the bill (Rec. 11.) That the purpose and avowed object and intention of that corporation was to invade the rights of the complainant and establish a rival water works to supply the inhabitants of New Orleans with water through pipes and conduits, engines and machinery.

That as soon as they had obtained and published their charter they pretended and held out that the new company had full right to establish at once a rival and competing system of water works in New Orleans, and intended to bring into the city in mains and pipes the waters of a stream in the neighbor-

ing parish of St. Tammany, called the Bogue Falaya, and parallel to all of the mains and pipes of the complainant; that in furtherance of their scheme they had, as they asserted and as complainant believed, in some way procured the adoption of an act of Congress granting them right of way through public lands and leave and permission to lay mains and pipes under and across Lake Pontchartrain, navigable water of the United States, with the avowed purpose of bringing into the city of New Orleans the waters of the Bogue Falaya.

That the new company is in negotiation with the city of New Orleans; that many of the council of the city pretend to believe that the city has the right to give said Company the right to set up a rival water works, and claims that right as the result of the adoption of the State Constitution of 1879, and persist in tampering with and attempting to destroy the property of the complainant, and have by their acts impaired its value, have by their act up to the time when the bill was filed, depreciated the value of the stock of the complainant at least $60,000, and put the complainant in such depreciable credit that it cannot borrow money by the sale of its bonds to extend its works without great loss and sacrifice, and if allowed to continue their acts will cause complainant irreparable loss and injury. That unless arrested by injunction the defendants will carry their threats into effect.

The prayer was for injunction and a decree that the charter of complainant was valid in form as passed, and unaffected by the Constitution of 1879, and that the city be compelled to observe both and desist from its assaults on the property conveyed to the complainant; and that Article 258 of the Constitution of 1879 did not and could not impair the contract contained in the charter of complainant.

There was a motion for injunction *pendente lite* and injunction against the St. Tammany Company.

On September 4th, 1882, the St. Tammany Company filed a paper in the case. It is difficult to tell what it was intended

for (Rec. 23.) This paper was stricken from file by order of the Court.

On October 2d, the defendant St. Tammany Company, filed a demurrer. Want of jurisdiction want of equity, were the assigned grounds of demurrer.

The demurrer was overruled, and the defendants answered. The St. Tammany Water Works denied that there was any exclusive right in the complainant. and averred its intention to construct and operate a rival Water Works in New Orleans.

The case went to final hearing on bill, answer and proof, and on April 12th, 1883, the Court made a final decree in the case in accordance with the prayer of the bill, decreeing that the charter of the New Orleans Water Works Company was a valid contract, and that it conferred on that Company the monopoly named in the charter and granted a perpetual injunction against the defendants, restraining them from invading the rights of the complainants. From this decree this appeal was taken by said defendants.

We have stated the pleadings and issues in detail to show that the questions involved are precisely the same as involved in New Orleans Water Works vs. Rivers, 115 U. S., 675, determined at the last term of this Court, and that there is nothing in the present case to distinguish it from the case already decided. The appellee relies on Water Works vs. Rivers as conclusive and precluding any further discussion of the questions determined and settled in that case.

Respectfully submitted,

J. R. BECKWITH,

E. H. FARRAR,

Counsel for Appellee.

APPENDIX.

EXTRA SESSION OF 1877.

No. 33.] AN ACT

To enable the city of New Orleans to promote the public health and to afford greater security against fire, by the establishment of a corporation to be called the "New Orleans Water Works Company;" to authorize the said Company to issue bonds for the purpose of extending and improving the said works, and to furnish the inhabitants of New Orleans an adequate supply of pure and wholesome water; to permit the holders of Water Works bonds to convert them into stock, and to provide for the liquidation of the bonded and floating debt of the city of New Orleans.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Louisiana in General Assembly convened*, That a corporation be, and the same is hereby created, to be styled "The New Orleans Water Works Company," the capital stock whereof shall consist of two millions of dollars, which shall be divided into twenty thousand shares of one hundred dollars each.

SEC. 2. *Be it further enacted, etc.*, That immediately after the organization of the said Water Works Company, as hereinafter provided, it shall be required to issue to the city of New Orleans, stock to the amount of six hundred and six thousand six hundred dollars, as full paid, and not subject to assessment; and in addition thereto, one similar share for every one hundred dollars of water works bonds which said city may have taken up heretofore and extinguished by payment, exchange or otherwise; and that the residue of said capital stock shall be reserved for the benefit of all holders of Water Works bonds, to the extent of the amount now outstanding, who may elect to avail

themselves of the provisions of this act; and the said Water Works Company shall issue to the said city of New Orleans, to be exchanged with the holders of said bonds, one share of full paid stock not subject to assessment, for each and every one hundred dollars of said Water Works bonds; and the said bonds, as fast as surrendered and exchanged for stock as aforesaid, be cancelled; that for the purpose of effecting said exchange of outstanding Water Works bonds for stock, as aforesaid, the city of New Orleans shall be entitled to all the certificates for the shares of said stock of said New Orleans Water Works Company, and shall, by advertisement for six months in two newspapers in the city of New Orleans and two newspapers in the city of New York, give notice that it will exchange said stock at par for said Water Works bonds at par, exclusive of the overdue coupons attached to said bonds, which shall constitute a separate demand against said city, and in case any of the said bondholders shall fail or refuse to avail themselves of this act within one year from the formation of said company, the said city of New Orleans shall not thereafter be required to make said exchange, but may retain the unused shares of stock for its own account and benefit, unless it shall prefer to continue to take up any of said outstanding bonds by exchange as aforesaid.

SEC. 3. *Be it further enacted, etc.*, That the said Water Works Company shall be organized by the Mayor of the city, giving thirty days' notice that he will receive subscriptions of bondholders who may agree to exchange their bonds for stock as aforesaid; and the said city shall at once subscribe for stock to the amount of six hundred and six thousand six hundred dollars, and such further amount as shall equal the par value of any of said Water Works bonds, which shall have been extinguished by said city; and as soon as, in addition to the subscription of said city, there shall be subscribers for an exchange of said bonds for stock to the extent of five hundred thousand dollars, and the said amount of bonds shall have been actually surrendered to and cancelled by the Administrator of

Finance, the said subscribers shall assemble together, on a day to be named by the Mayor, and shall elect a Board of Directors, to consist of seven persons, four of whom shall be designated by the Mayor, and the remaining three shall be elected by said subscribers, other than said city, from amongst themselves; and the persons thus designated and elected shall constitute the first Board of Directors, and shall continue in office until the first of July, eighteen hundred and seventy-eight, and the said Board shall elect one of their number as President.

SEC. 4. *Be it further enacted, etc.*, That as soon after the election of said Board of Directors as the City Council may determine, the Mayor of the city shall transfer, by notarial act, to said New Orleans Water Works Company the Water Works and all the property appurtenant thereto.

SEC. 5. *Be it further enacted, etc.*, That the said Water Works Company shall own and possess the privileges acquired by the city of New Orleans from the Commercial Bank; that it shall have for fifty years from the passage of this act the exclusive privilege of supplying the city of New Orleans and its inhabitants with water from the Mississippi river, or any other stream or river, by means of pipes and conduits, and for erecting and constructing any necessary works or engines, or machines for that purpose; that it may contract for, purchase or lease any land or lots of ground, or the right to pass over and enter the same from time to time as occasion may require, through which it may be necessary to convey the water into said city, or to distribute the same to the inhabitants of said city; and to construct, dig, or cause to be opened, any canals or trenches whatsoever, for the conducting of the water of the rivers from any place or places it may deem fit, and to raise and construct such dykes, mounds, reservoirs, as may be required for securing and carrying a full supply of pure water to said city and its inhabitants; to enter upon and survey such lands as it may think proper, in order to ascertain the best mode of furnishing a supply of water; to lay and place any number of con-

duits or pipes, or aqueducts, and to cleanse and repair the same, through or over any of the lands or streets of the city of New Orleans: *Provided*, the same shall not be an obstruction to commerce or free circulation; and also to have and use a common seal and alter the same at pleasure; to ordain and establish by-laws for its government and that of its officers and employees, not repugnant to this Act and the Constitution of the State and of the United States, or the ordinances of the City of New Orleans.

SEC. 6. *Be it further enacted, etc.*, That on the first Monday of July, eighteen hundred and seventy eight, and annually thereafter, an election for directors of said Company, after ten days' notice of the same and place of holding the same, shall be held, at which election there shall be elected four Directors by all the stockholders other than the city of New Orleans; and the Mayor of the city, the Administrator of Water Works and Public Buildings and the Administrator of Finance of said city, shall be *ex-officio* Directors of said Company; the said city, through its Mayor and Administrators, shall have the right to vote at the election of Directors, and at all meetings of said stockholders, in the same manner as any other stockholders. That at all elections and all meetings of stockholders each share of stock shall be entitled to one vote. The Directors elected shall serve for one year, and shall hold their offices until their successors are appointed; and no failure to elect Directors at the time designated, shall prevent the Board of Directors from fixing another day for holding the election; and in case of vacancy in the Board of Directors, occasioned by death, resignation or absence from the State, or other cause, the Board of Directors may fill such vacancy for the remainder of the year.

SEC. 7. *Be it further enacted, etc.*, That the stock owned by said city of New Orleans in said Water Works Company, shall not be liable to seizure for the debts of said city.

SEC. 8. *Be it further enacted, etc.*, That the stock of said Water Works Company may be increased to two millions of

dollars, for the purpose of enabling said Company to improve, enlarge and extend its works: *Provided*, that the new or increased stock shall be paid for in cash, or in work done for the Company; and in case of non-payment of instalments on stock subscribed for, the same may be forfeited to the use of said Company.

SEC. 9. *Be it further enacted, etc.*, That the Board of Directors of said Company shall have power, in addition to the authority to increase its capital stock, to borrow money for the purpose of improving and enlarging its works, and increasing the supply of pure water; and to accomplish this purpose, the said Board of Directors are hereby authorized to issue the bonds of the Company to an amount not exceeding two millions of dollars, in such sums, on such terms, and bearing such rate of interest as said Board may determine, and the payment of said bonds, in principal and interest, may be secured by a mortgage of all the property and franchises of said Company, including its franchise to be a corporation, and said mortgage may include the property and franchises of said Company, acquired or to be acquired, and the registration of said mortgage in the office of the Recorder of Mortgages for the Parish of Orleans, shall operate on the property and franchises of said Company, wheresoever situated, and shall be and continue a valid and subsisting mortgage until the payment of the debt secured by it, without re-inscription: *Provided, however*, that no bond shall be issued, or mortgages given, without the consent of the Council of the city of New Orleans, and said bond shall not be sold or disposed of except on such terms as shall be approved by said Council of said city.

SEC. 10. *Be it further enacted, etc.*, That said Company shall not declare or pay any dividends, except in cash, and then only out of the net semi-annual or annual receipts, after payment of expenses of operation, and the interest on its bonded debt, nor shall any dividends be declared until the contemplated works are completed and in use.

SEC. 11. *Be it further enacted, etc.*, That the city of New Orleans shall be allowed to use water from the pipes and plugs of said Company now laid, or hereafter to be laid, free of any charge, for the extinguishment of fires, cleansing of the streets, and for the use of all public buildings, public markets and charitable institutions, and that the said Company shall place, free of any charge whatever, two hydrants of the most approved construction in front of each square, where a main pipe shall be laid at a suitable distance from each other, from which a sufficient quantity of water may be conveniently drawn for the extinguishment of fires, for watering the streets and cleansing the gutters, and for any other puplic purpose; that on the squares which do not front on the river, the hydrants shall be placed on opposite sides of the streets, at an equal distance from each other and the corners. It shall be the duty of the said Company, whenever main pipes shall be laid, to supply water for all the purposes herein mentioned at all times during the continuance of this charter; and in consideration thereof the franchises and property of said New Orleans Water Works Company, used in accordance with this act, shall be exempt from taxation —State, municipal and parochial.

SEC. 12. *Be it further enacted, etc.*, That the said Water Works Company shall have the right in the city of New Orleans and its suburbs and adjoining lands, to use the streets and public places for the purpose of laying pipes and hydrants to run water : *provided*, that said streets shall not be obstructed longer than necessary for such purpose, or for making repairs, and that said streets shall be restored to the same condition they were in as soon as practicable, by the said Company, under the supervision of the City Surveyor. In case the said Water Works Company shall require any lot of ground in the city of New Orleans, or any lot of ground or quantity of land situated in any parish of this State, for the purpose of constructing reservoirs or other works, or for the purpose of laying pipes to conduct water to the city of New Orleans, and shall not be able to agree

with the proprietor or proprietors of said lot of ground or land, the said Company shall have power to cause the same to be expropriated in pursuance of the general laws on the subject of expropriation for works of public utility now in force, or which may hereafter be enacted, and if the object of said Company be merely to lay pipes through a piece of land or lot of ground, the expropriation shall be confined merely to the servitude it may require, and not to the rights of absolute ownership.

SEC. 13. *Be it further enacted, etc.*, That the said Water Works Company, immediately after its organization, shall proceed to the erection of new works and pipes sufficient in capacity to furnish a full and adequate supply of water, to be drawn from the Mississippi river, or elsewhere, as may be judged most expedient; that said new works and pipes shall be commenced within twelve months from the passage of this act, and shall be year by year completed, so that, within five years from the date of this act, they shall be completed so as to give an adequate supply of water to the people of the city of New Orleans, exclusive of the Fifth District. If said work be not done as above prescribed, said corporation shall forfeit all exclusive privileges granted herein, and the city shall have a right to contract with any one else for a supply of water as above provided, and to expropriate the property of the corporation hereby created. After the completion of the new works and pipes, the said Company shall, from time to time, as the wants of the population may require, and when the estimated revenue on the cost of such extension shall equal ten per centum, extend their works throughout the entire limits of the city and suburbs, and any future extension of said city; and any failure by said Water Works Company to comply with this provision shall work a forfeiture of this charter.

SEC. 14. *Be it further enacted, etc.*, That the city of New Orleans, through its Council, shall have authority to apply the stock subscribed for by said city, as herein provided, to the reduction of the bonded or floating debt of the said city, on such

terms of adjustment as may be agreed upon between the City Council and the holders of such bonded or floating debt: *Provided*, said stock shall not be sold at less than par, and that when sold for obligations of the city, it shall only be under sealed proposals, after not less than fifteen days' advertisement in two daily papers, to the bidder who shall offer said obligations at the most advantageous rate, the Council reserving the right to reject any and all bids.

SEC. 15. *Be it further enacted, etc.*, That the said Water Works Company shall have the right to fix the rates of charges for water: *Provided*, that the net profits of the company shall not exceed ten per cent. per annum, and shall publish sworn annual statements of its business and condition; and that the City Council shall have the power to appoint a committee, of not less than five, who shall have access to the books of the said company, and make such extracts from the same as they may deem necessary, and in case the said profits shall exceed ten per cent., the City Council shall have the right to require said Company to reduce the price of water in such manner, and in such a proportion, that the profits shall never exceed the above named rates: *And, provided further*, that the rates charged shall never exceed those now paid by the city, and in case said Company shall refuse compliance, the demand of said city may be enforced by a writ of mandamus.

SEC. 16. *Be it further enacted, etc.*, That if any person or persons shall obstruct the said Company, their successors, agents, workmen or servants, in conveying the said water into the said city and its suburbs, or shall change, alter, remove, injure or destroy any work or part of a work made by the said Company, or cause to be made, for the purpose of introducing water into the city of New Orleans, under the authority of this act; or if any person shall alter, change, or pollute the water or stream which the said Company shall hereafter introduce, or be preparing to introduce, such person or persons shall be indicted in the proper court for the trial of such offense, and being thereof

convicted, shall be fined at the discretion of the court, according to the nature of the offense, and imprisoned for a term not exceeding seven years, such fine to be paid and applied to the use of said Company.

SEC. 17. *Be it further enacted, etc.*, That until other works are constructed by which the present works may be dispensed with, the same shall remain under the control of the City Council, and the superintendence thereof remain in the hands of the Administrator of Water Works and Public Buildings; but the said Company shall be authorized to collect the revenues thereof and apply them to the expense of operating and extending the works. At the expiration of fifty years from the organization of the Company, the city shall have a right to buy the works, conduits, pipes, etc., of the Company, at a valuation to be fixed by five experts: two to be named by the city, two by the Company, and the four to select the fifth expert; but should the city neglect or refuse to purchase said works, etc., as above provided, the charter of the Company shall be *ipso facto* extended for fifty years longer, but without any exclusive privilege or right to supply water, according to the provisions of the charter.

SEC. 18. *Be it further enacted, etc.*, That nothing in this act shall be so construed as to prevent the City Council from granting to any person or persons, contiguous to the river, the privilege of laying pipes to the river, exclusively for his own or their own use.

(Signed) LOUIS BUSH,
Speaker of the House of Representatives.

(Signed) LOUIS A. WILTZ,
Lieutenant Governor and President of the Senate.

Approved March 31, 1877.

(Signed) FRANCIS T. NICHOLLS,
Governor of the State of Louisiana.

A true copy:

WILL A. STRONG,
Secretary of State.

No. 43.] AN ACT

Relative to the Charter of the New Orleans Water Works Company and amending an Act Number Thirty-three of Extra Session of eighteen hundred and seventy-seven (1877), approved March 31st, 1877.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Louisiana in General Assembly convened.* That, at the election to be held on the first Monday of July, eighteen hundred and seventy-eight (1878), and annually thereafter, for Directors of the New Orleans Water Works Company, the stockholders of the said New Orleans Water Works Company shall elect four Directors; but the city of New Orleans shall not vote at said elections, she being already fully represented, for the amount of her stock, by the Mayor of the city, the Administrator of Water Works and Public Buildings, and by the Administrator of Finance, who are *ex-officio* Directors of said Company.

SEC. 2. *Be it further enacted, etc.*, That section ten (10) of said Act Number Thirty-three (No. 33), of Extra Session of the year eighteen hundred and seventy-seven (1877), be amended and re-enacted so as to read as follows: "That said Company shall not declare or pay any dividends except in cash, and then only out of the net semi-annual or annual receipts after payment of expenses of operation, and gradual extension, and the interest on its bonded debt."

SEC. 3. *Be it further enacted, etc.*, That section seventeen (17) of aforesaid Act be amended and re-enacted so as to read as follows: "That at the expiration of fifty years from the organization of the Company, the city shall have a right to buy the works, conduits, pipes, etc., of the Company, at a valuation to be fixed by five experts: two to be named by the city, two by the Company, and the four to select the fifth expert; but should the city neglect or refuse to purchase said works, etc., as above provided, the charter of the Company shall be, *ipso facto*, extended for fifty years longer, but without any exclusive privi-

lege or right to supply water according to the provisions of the charter."

SEC. 4. *Be it further enacted, etc.*, That the time allowed to the said New Orleans Water Works Company to commence and proceed to the erection of new works and pipes (as contemplated by said Act Number Thirty-three), (No. 33), shall commence six months after the organization of said Company, and not from the date of the passage of said act.

SEC. 5. *Be it further enacted, etc.*, That the full, complete and adequate supply of water referred to in section thirteen (13) of said Act No. 33, shall be so construed as to require a supply of water at the height of not less than fifteen (15) feet from the ground wherever the pipes of the Water Works now exist.

SEC. 6. *Be it further enacted, etc.*, That the word "State" in section eleven (11) of said Act No. 33 of 1877, and in the last line thereof, be stricken out, so that the said Company shall not be exempt from State taxation.

SEC. 7. *Be it further enacted, etc.*, That all laws or parts of laws contrary to the provisions of this Act, or in conflict therewith, are hereby repealed to the extent that they do conflict, and that this Act shall take effect from and after its passage.

(Signed) LOUIS BUSH,
Speaker of the House of Representatives.

(Signed) LOUIS A. WILTZ,
Lieutenant Governor and President of the Senate.

Approved February 26, 1878.

(Signed) FRANCIS T. NICHOLLS,
Governor of the State of Louisiana.

A true copy:

WILL A. STRONG,
Secretary of State.

AN ACT

To incorporate the Commercial Bank of New Orleans.

Whereas, sundry inhabitants of the city of New Orleans have petitioned this General Assembly, setting forth that they are desirous of establishing a Company in the city of New Orleans, invested with banking privileges, and to be entitled the "Commercial Bank of New Orleans:" the chief object of which said Company, is to be the conveying of water from the river into the city of New Orleans and its faubourgs, and into the houses of its inhabitants. *And whereas*, the said object will greatly contribute to the security of the said city from fire, and to the health and convenience of the inhabitants, and the agricultural and commercial interests of this State may be greatly promoted by extending to said Company the privileges required, *therefore*,

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SEC. 4. *Be it further enacted, etc.*, That all such persons as shall become subscribers to said Company, their successors and assigns, shall be and are hereby created and made a corporation and body politic, by the name and style of the *Commercial Bank of New Orleans*, and by that name shall be and are hereby made capable in law, to have, hold, purchase, to receive in payment of debts, possess, enjoy, and retain, to them and their successors, property and estate of what nature, kind, or quality soever, or so far as is necessary to carry into complete effect the object of this charter, which is declared to be the furnishing of the city with good and wholesome water; and the same to alien, transfer and dispose of, to sue and be sued, plead and be impleaded, answer and be answered, defend and be defended, in any court or courts of record, or other place whatsoever; to have forever the exclusive privilege, from and after the passing of this act, of supplying the city and inhabitants of New Orleans and its faubourgs, with water from the river Mississippi, by means of pipes or conduits, and for erecting, constructing, or working of any

necessary engine; and they may contract for, purchase or lease, the right to enter and pass through, from time to time, as occasion may require, any lands or grounds through which they may deem it necessary to convey the said water into said city and its faubourgs; and to construct, dig, or cause to be opened, any canals or trenches whatsoever, for the conducting of the water of the river from any place or places that they may deem fit, and to raise and construct such dykes, mounds, or reservoirs, as they may judge proper, for securing and conveying such supply of water, as aforesaid, to the said city and the faubourgs thereof; and to survey such lands as they may think proper, in order to ascertain the best mode of furnishing such supply, and to lay and place any number of conduits, pipes and aqueducts, and to cleanse or repair the same, through or over any of the lands or streets of the city of New Orleans and its faubourgs; and also to have and use a common seal, and the same to break, alter and renew at pleasure; and also, through their President and Directors, to ordain, establish, and put in execution, such by-laws, ordinances and regulations, as shall seem necessary and convenient for the government of said corporation, not being contrary to this act, nor to the constitution and laws of the United States, or of this State, or ordinances of the City Council of New Orleans; and generally to do and execute all such acts, matters and things, as to them shall or may appertain to do; subject, nevertheless, to the rules, regulations, restrictions, limitations and provisions hereinafter specified and declared. *Provided, however*, that at any time after the expiration of thirty-five years from the passage of this act, it shall be lawful for the corporation of the city of New Orleans to purchase from the Commercial Bank of New Orleans, the Water Works constructed by said Company in virtue of this act—and said Company shall not refuse to sell the works aforesaid, with all the rights and privileges appertaining to the same, on the terms hereinafter provided.

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SEC. 11. *Be it further enacted, etc.*, That said Company shall, within twelve months after the first election of Directors, commence works, and commence to procure such materials, as may be necessary to enable them to furnish the inhabitants of the city of New Orleans and its faubourgs, with sufficient water from the river at all seasons of the year; and in order that the true intent and meaning of this act be strictly adhered to and complied with, and that the Water Works, contemplated to be constructed by said Company, be completed in the shortest time practicable, under all the circumstances, the sum of at least one hundred thousand dollars shall be expended, on the works aforesaid, annually, until the said Company is in a situation to supply, and actually do supply, water to the greater part of the streets of the city proper, and the principal and most populous streets of the faubourgs—said expenditure to commence within one year after the passage of this act—so that the city of New Orleans and the faubourgs thereof, may be furnished with water in the streets, and such inhabitants may procure it by means of conduits or pipes, within their houses and lots, at a price to be regulated by the Company; and should the said Company fail or neglect either to commence or continue said works as aforesaid, then, and in such case, the charter now granted shall be wholly null and void; *provided, however*, that the net profits on the same shall not exceed an interest of fifteen per centum per annum, from the time of disbursements on said works; and at such times as dividends shall be declared by the bank, say semi-annually, the interest on the sum expended in constructing said Water Works shall be added thereto, and shall form a part of the capital invested, until the net revenue of said works amount to fifteen per centum as aforesaid; *and provided also*, that the City Council of New Orleans shall have the power annually to appoint a committee, who shall have access to such of the books of said bank as relate to the said Water Works Company, and may make such extracts from the same as they may think necessary;

and provided further, that at the end of five years after the first appropriation, the said net profits shall not exceed ten per cent. —and in case said profits should exceed fifteen per centum during the first five years, and ten per centum afterwards, as provided for in this section, the City Council shall have the power to reduce the price of water, in such a manner and in such a proportion, that the profits should never exceed the above mentioned rates.

* * * * * * * *

SEC. 21. *Be it further enacted, etc.*, That within the first thirty days that the books are opened for subscription, the corporation of the city of New Orleans may subscribe for five thousand shares of the capital stock of said company, not subject to deduction; and for which the said company may receive the bonds of the Mayor, Aldermen and inhabitants of New Orleans, redeemable in forty years, bearing an interest not exceeding five per centum per annum, payable half yearly.

SEC. 22. *Be it further enacted, etc.*, That if, agreeable to the twenty-first section of this act, the corporation of the city of New Orleans shall subscribe for five thousand shares of the capital stock of the Commercial Bank of New Orleans, then, and in that case, the City Council of New Orleans shall annually elect, by ballot, from the Mayor, Recorder and Aldermen of said Council, two persons, who shall be members of the Board of Directors; and the stockholders shall only elect eleven instead of thirteen directors, as provided for in the third and sixth sections of this act, in which election the said City Council shall not vote as stockholders; *provided*, that nothing herein contained shall be so construed, as in any manner to impede, diminish or impair, the rights and powers granted to the City Council of New Orleans, and to the committee to be appointed by them annually, by virtue of the eleventh section of this act.

SEC. 23. *Be it further enacted, etc.*, That the provisions of the thirteenth section of this act, relative to half yearly dividends, shall not be so construed as to apply to the stock, sub-

scribed for and owned by the corporation of the city of New Orleans; the dividends arising from the shares so owned, shall be applied, first, to the payment of the interest on the bonds given to the Commercial Bank of New Orleans for the stock subscribed by the said corporation, and the surplus shall be passed to the credit of the said corporation, half yearly, at such times as dividends are payable to other stockholders, to be set apart as a sinking fund, applicable alone to the payment of the bonds of said corporation, when they shall become due, and the said corporation shall be allowed an interest of five per centum per annum on the same, by the Commercial Bank of New Orleans.

SEC. 24. *Be it further enacted, etc.*, That if the corporation of the city of New Orleans shall fail to subscribe for five thousand shares of the capital stock of the Commercial Bank of New Orleans, within the first thirty days the books are opened for subscriptions, the twenty-first, twenty-second and twenty-third sections of this act shall be considered null and void, and of no effect.

* * * * * * * *

SEC. 33. *Be it further enacted, etc.*, That in the city of New Orleans, its surburbs, and adjoining lands laid out in town lots, the Company shall have the power of using the streets and public places, for the purpose of placing pipes to run the water: *Provided*, they do not obstruct the said streets longer than will be absolutely necessary for the said purpose, or for making any repair; *and provided* they restore the said streets to the same condition they were before, in as short a time as possible; that within the said limits, it shall not have power to place any pipe, or do any work upon any lot of ground, without the consent of the owner; and that out of the said city, its suburbs, and the lands laid out in town-lots, if the said company shall not be able to agree with the proprietor or proprietors of lots of ground through which it may be necessary to run the water, through pipes or otherwise, as the directors may deem expedient, for the purpose of introducing water into the said city, and its fau-

bourgs; or if such owner or owners shall be absent out of the State, or unknown, or shall, from incapacity, legal or otherwise, be precluded from making any contract or agreement in relation thereto, it shall and may be lawful, on the application of the President and Directors of the Commercial Bank of New Orleans, for the judge of that judicial district of Louisiana wherein the city of New Orleans is, or may be hereafter, situated, to issue his warrants to the sheriff of the parish of Orleans, commanding

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SEC. 36. *Be it further enacted, etc.*, That if any person or persons shall obstruct the said Company, their successors, agents, workmen or servants, in conveying the said water into the said city and its faubourgs, or shall change, alter, remove, injure or destroy, any work or part of a work made by the said Company, or caused to be made, for the purpose of introducing water into the city of New Orleans and its faubourgs, under the authority of this act; or if any person shall alter, obstruct, change or pollute, by any tan-yard, hog-stye, slaughter-house, dye-pot, or otherwise, the waters or streams which the said Company shall hereafter introduce, or shall be preparing to introduce into the city of New Orleans and its faubourgs, under the authority given and regulations prescribed by this act, such person or persons shall be indicted in the proper court for the trial of offences within the parish of Orleans committed, and being thereof convicted, shall be fined at the discretion of the court, according to the nature of the offence, and imprisoned for any time not exceeding seven years; such fine to be paid and applied to the use of said Company.

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SEC. 38. *Be it further enacted, etc.*, That the corporation of New Orleans shall be supplied by the said Company, free of charge, with all water necessary for the extinguishment of fires and other public purposes; nor shall the City Council be sub-

jected to any charge for water furnished to supply the gutters of the said city and faubourgs; and that the said Company, as they progress in laying aqueducts, shall place, free of any charge whatever, two hydrants of a proper construction, in front of each square, at a suitable distance from each other, from which a sufficient quantity of water may be conveniently drawn, for extinguishing fires, for wetting, washing and watering the streets and gutters, and any other public purpose; that on the squares which do not front on the river, the hydrants shall be placed on opposite sides of the streets, at an equal distance from each other and the corners; that the said hydrants shall be of a proper size and made so as at all times to furnish water for the fire engines, and purposes herein mentioned; it shall further be the duty of said Company, to supply water for all the purposes herein mentioned, at all times, during the continuance of this charter, unless prevented by some unavoidable accident; and in case such shall occur, the repairs shall be made and the water again furnished at the expiration of the necessary delay; and the said Company shall supply a sufficient quantity of clear, pure and wholesome water for the use of the inhabitants, within the limits aforesaid, at the elevation of fifteen feet, when the same may be required. *Provided, however*, that said hydrants shall be under the control of the Commercial Bank.

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SEC. 41. *Be it further enacted, etc.*, That the second section of this act shall not be so construed as to apply to the payment of ten dollars per share *at the time of subscribing*, on the stock subscribed for by the City Council of New Orleans. But said corporation shall, within thirty days from the organization of the first Board of Directors of the Commercial Bank of New Orleans, execute in the form required by the Directors, the bonds of the Mayor, aldermen and inhabitants of New Orleans, to the order of the President and Directors of said Company, for the full amount of stock subscribed by the corporation afore-

said, say five hundred thousand dollars, bearing an interest of five per centum per annum, payable in forty years, the interest on said bonds to be paid semi-annually; and should the bonds taken by said Company, from the corporation aforesaid, be sold at a premium, such premium or excess, over and above their par value, shall form a part of the sinking fund, as provided for in the twenty-third section of this act.

SEC. 42. *Be it further enacted, etc.*, That when after the expiration of thirty-five years, the said corporation of New Orleans shall be inclined to buy the said Water Works from the Commercial Bank of New Orleans, the price shall be fixed by arbitrators, five of whom shall be chosen by the President and Directors of the Commercial Bank of New Orleans, and five by the City Council of New Orleans; said arbitrators not to be stockholders in said company, nor members of the City Council of New Orleans. Said arbitrators shall take into consideration the *value* of the Water Works and grounds appertaining thereto, for supplying the city and faubourgs of New Orleans with water by the said Company; and if they agree, and so report, in *writing*, their award shall be binding on the respective parties. But in case of disagreement, the judge of the judicial district court in which the said Water Works are situated, shall appoint as umpires, five disinterested individuals as above, whose decision and award, *in writing*, reported to the judicial district court aforesaid, shall be binding and conclusive. And the amount so agreed upon, shall be payable in the bonds of the Mayor, aldermen and inhabitants of New Orleans, bearing an interest of five per centum per annum, interest payable thereon semi-annually, and redeemable in not less than ten, nor more than thirty years from the day on which said award shall be signed, and the said Water Works delivered over to the said corporation of New Orleans.

SEC. 43. *Be it further enacted, etc.*, That in case the Mayor, aldermen and inhabitants of New Orleans shall deem it unad-

advisable or inexpedient to purchase the said Water Works from the Commercial Bank of New Orleans, as provided for in sections four and forty-two, and so notify the Commercial Bank of New Orleans thereof, at any time within eighteen months thereafter, the bonds given by the Mayor, aldermen and inhabitants of New Orleans, for the amount of stock owned by the corporation of New Orleans, shall be renewed by the Commercial Bank of New Orleans for twenty-five years, on the same terms and conditions as provided for in sections twenty-one and forty-one of this act; *provided, however*, the amount formed by the sinking fund herein provided, shall be applied to the payment of said bonds, as far as it will go, and the bonds only renewed for such balance as may not be made up by the sinking fund aforesaid.

SEC. 44. *Be it further enacted, etc.*, That the corporation of New Orleans shall and may continue to make use of the Water Works now owned by the said corporation, for supplying the city with water, until the Commercial Bank of New Orleans shall be so far advanced with the works contemplated by this act, as will enable them to furnish water in such parts of the city as are now supplied by the works at present in operation; or until, by the progress of the Water Works so to be constructed, it may become necessary to remove the pipes at present in use, should such removal be found necessary.

SEC. 45. *Be it further enacted, etc.*, That the said Company in constructing the Water Works aforesaid, shall purchase from the Mayor, aldermen and inhabitants of New Orleans, the pipes already laid down by said corporation, at such price as may be agreed upon by seven arbitrators, of whom the superintendent of the works proposed to be constructed, shall be one, and three to be chosen by the President and Directors of the Commercial Bank of New Orleans, and three by the City Council of New Orleans, whose award, as to the *value* of said pipes, for the use of said Company, shall be final.

SEC. 46. *Be it further enacted, etc.*, That it shall be the duty

of the said bank to sell to the best advantage, the bonds received of the Mayor, aldermen and inhabitants of the city of New Orleans, for their subscription, and to contract for the payment of the interest thereof, at such place or places as the President and Directors may deem expedient. *Provided*, that any additional charge, loss or exchange, or other expenses, consequent upon the sale of the bonds, or payment of such interest in any other place than New Orleans, shall be wholly defrayed by the Bank.

SEC. 47. *Be it further enacted, etc.*, That during the first term of thirty days, in which the subscription books shall remain open, as provided for in section first, no person shall be allowed to subscribe, who is not a citizen of the United States and a resident of this State, of which facts the commissioners shall be the sole judges; and that all subscriptions shall be made in person, or under a notarial power, executed by not more than three persons. *Provided, however*, this section shall not be so construed as to prevent subscriptions, after the first term of thirty days, either in person or by proxy, should the books be re opened. And that no individual, commercial firm or corporation, shall be allowed a greater number of votes than one hundred, for the election of Directors of said bank, either by proxy or otherwise, in his, her or their name.

SEC. 48. *And be it further enacted, etc.*, That the President and directors of the Commercial Bank of New Orleans, may, at such time as they may deem it expedient, establish agencies at such places as they may think proper, for the purchase of bills of exchange and sale of bank checks; and may appoint such officers as they may think proper for the administration of the same.

(Signed) ALCEE LABRANCHE,
Speaker of the House of Representatives.

(Signed) C. DERBIGNY,
President of the Senate.

Approved April 1, 1833.

(Signed) A. B. ROMAN,
Governor of the State of Louisiana.